June 12, 2023

The Honorable Juan R. Sanchez
United States District Court
Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez:

I am writing to request your consideration of my application for a clerkship beginning in the fall of 2024. I am a rising third-year law student at the University of Pennsylvania Carey Law School.

Given your experience as a public defender, I want to highlight my dedication to public defense and public service. As a summer law clerk at the Virginia Capital Representation Resource Center and as a legal extern at the Capital Habeas Unit at the Federal Community Defender Office, I strengthened my legal research and writing skills through capital habeas work while affirming a commitment to public defense. At Penn Carey Law, I have taken coursework in constitutional criminal procedure, appellate advocacy, and conducted pro bono legal research which have taught me to think and communicate critically, creatively, and persuasively in advocating for clients and write with attention to detail.

I am attaching my resume, transcript, and writing sample. Letters of recommendation from Professor David Rudovsky (drudovsk@law.upenn.edu); Professor Jasmine Harris (jasmineeharris@law.upenn.edu); and Rob Lee, Esq. (roblee@vcrrc.org) are also included. Please let me know if any other information would be useful. Thank you.

Respectfully,

Catherine G. Dema

Catherine G. Dema
201 S 25th St. Apt. 224
Philadelphia, PA 19103
cdema@pennlaw.upenn.edu
(816) 305-9935

EDUCATION

University of Pennsylvania Carey Law School, Philadelphia, PA
J.D. Candidate, May 2024

Honors: Levy Scholar, full tuition merit-based scholarship
Journal of Law & Social Change, Executive Editor
Activities: Student Public Interest Network, President
Penn Law Criminal Record Expungement Project

William Jewell College, Liberty, MO
B.A., *summa cum laude*, Physics and Oxbridge History of Ideas, May 2021

GPA: 3.908
Honors: Oxbridge Honors Scholarship
Honors Thesis in Physics: "*Double Diffusive and Rayleigh Taylor Instabilities in Particle-laden Water Stratified Over Salt Water in a Hele Shaw Cell"*
Honors Thesis in Oxbridge History of Ideas: "*The Role of Autonomy and Oppression in Desire, Consent, and Relationships"*
Activities: Gender Issues & Feminism Club, Founder and Engagement Chair
The Hilltop Monitor, Features and Investigations Page Editor
Study Abroad: University of Oxford, Hertford College, Oxford, UK, 2019 – 2020

EXPERIENCE

Regional Public Defender for Capital Cases, San Antonio, TX — May 2023 – Present
Summer Legal Intern
Write motions and briefs, draft pleadings, and conduct legal research for capital trials. Locate and interview witnesses, conduct in-person visits with clients and their families, and provide observations. Participate in team meetings and strategy sessions. Locate and obtain documents and records and gather statistical data.

Prison Legal Education Project, Philadelphia, PA — Oct. 2022 – Present
Post-Conviction Co-Chair
Consult with post-conviction organizations and attorneys, facilitate program to involve law students in pro bono legal research and writing for clients pursuing post-conviction relief. Write legal memos and conduct legal research to support incarcerated clients pursuing post-conviction relief. Attend visits to incarcerated people to provide legal education and answer questions about pursuing legal action while incarcerated. Draft curricula and materials to provide legal information for incarcerated people.

Federal Community Defenders Capital Habeas Unit, Philadelphia, PA — Jan. 2023 – May 2023
Legal Extern
Drafted briefs, persuasive claims, and memos for use in state and federal post-conviction petitions, including on ineffective assistance of counsel, timeliness of post-conviction petitions, and categorical cruel and unusual punishment. Conducted legal and factual research on state and federal post-conviction and capital habeas law. Attended court hearings and legal visits with incarcerated clients.

Custody and Support Assistance Clinic, Philadelphia, PA
Advocate Sept. 2022 – April 2023
rafted petitions, conducted intake interviews for pro se litigants in the Philadelphia Family Court system, and helped craft arguments through pro bono project in partnership with Philadelphia Legal Assistance.

Virginia Capital Representation Resource Center, Charlottesville, VA
Summer Law Clerk May 2022 – July 2022
Drafted persuasive inserts for claims within motions for post-conviction relief. Conducted legal and factual research on capital habeas law in a variety of states and circuits, and wrote memoranda presenting legal and factual research. Drafted claims in collaboration with law clerks and attorneys. Attended legal visits with incarcerated clients. Reviewed court documents and transcripts on PACER and attended court hearings.

Penn Law International Refugee Assistance Project, Philadelphia, PA
Court Monitoring Project Volunteer Sept. 2021 – May 2022
Researched immigration court closures. Interviewed attorneys representing clients at the closed courts and detention centers and wrote report presenting findings.

William Jewell College Physics Department, Liberty, MO
Undergraduate Researcher June 2017 – May 2021
Designed and conducted research projects; created optical imaging systems; trained and supervised research assistants. Wrote proposals and conducted presentations at college and national research conferences. Volunteered for STEM outreach to elementary students in Kansas City Public Schools.

Cornell Laboratory for Accelerator-Based Sciences and Education, Ithaca, NY
NSF REU Physics Researcher June 2019 – Aug. 2019
Used Python programming to model optical systems and light optics designs. Created and presented written and oral research reports. Volunteered for STEM outreach to elementary students in Ithaca, NY.

INTERESTS
Podcasts, exploring local coffee shops and restaurants, casual biking and indoor cycling.

Catherine G. Dema
UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

Spring 2023

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Crimmigration	Rodriguez		3	An updated transcript will be forwarded when available.
Education and Disability Law	Harris	A	3	
Externship: Federal Defender Capital Habeas Unit	Bluestine	CR	7	
JLASC Independent Research Seminar	Ossei-Owusu	CR	1	
Externship Tutorial	Bluestine	CR	0	
Journal of Law and Social Change Associate Editor	Kreimer	CR	0	

Fall 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Criminal Procedure	Rudovsky	A-	3	
Appellate Advocacy	Sweitzer	B+	3	
Evidence	Mayson	A-	4	
Community Lawyering to End Mass Incarceration	Grote/Holbrook	A	2	
JLASC Independent Research Seminar	Kreimer	CR	1	
Journal of Law and Social Change Associate Editor	Kreimer	CR	1	

Spring 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Law	Ossei-Owusu	A-	4	
Constitutional Law	Kreimer	A-	4	
Plagues, Pandemics, and Public Health Law	Feldman	A-	3	
Administrative Law	Lee	A-	3	
Legal Practice Skills Cohort	Ramirez	CR	0	
Legal Practice Skills	Gowen	CR	2	

Fall 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Wang	B+	4	
Contracts	Hoffman	A	4	
Torts	deLisle	A-	4	
Legal Practice Skills Cohort	Ramirez	CR	0	
Legal Practice Skills	Gowen	CR	4	

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 05, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Clerkship Applicant Catherine Dema

Dear Judge Sanchez:

I write in support of the application of Catherine Dema for a clerkship in your Court. I am a Senior Fellow at the Law School where I teach courses in Criminal Law, Constitutional Criminal Procedure, and Evidence. In addition, for the past 50 years I have maintained a public interest/civil rights law practice in Philadelphia. In my teaching and law practice, I have had the opportunity to supervise many law students in internships, summer associate positions, and independent studies. As a result, I have developed a good understanding of student potential and the likely success of students in clerkships and other post-graduate positions.

Ms. Dema came to Penn Law as a Levy Scholar, a full tuition merit-based scholarship program. She graduated summa cum laude from William Jewell College with honors in both physics and history of idea and with a strong interest in criminal justice issues. At Penn Law, Ms. Dema has assembled an impressive academic record with grades almost entirely in the “A” and “A-” categories over her first three semesters. In addition, she currently serves as Executive Editor of the Penn Law Journal of Law and Social Change. She plans a career in criminal defense with a focus on capital cases and appellate advocacy and has engaged in internship and externship programs with the Federal Community Defender Capital Habeas Unit and the Virginia Capital Representation Resource Center (and his summer she will intern with the Texas Regional Defender Capital Case program) all in preparation for this field of work.

Ms. Dema was a student in my course in Constitutional Criminal Procedure and I had a good opportunity to evaluate her academic abilities. Her final examination and her classroom participation showed a strong understanding of the course materials, a full comprehension of doctrinal principles, the factors that shape investigative and trial practices, and the intersection of evidence, criminal law and constitutional restrictions on law enforcement practices.

In my discussions with Ms. Dema regarding her career goals and judicial clerkships, she has articulated a very strong interest in criminal justice issues and in particular capital defense litigation. I have no doubt but that she will practice very successfully in these areas. She sees a clerkship as an opportunity to improve her research and writing and analytical skills in areas other than criminal justice. She also expects that a clerkship will allow her to focus on courtroom advocacy and the qualities that ensure effective representation of clients.

Ms. Dema’s academic record and her work over the past several years demonstrate significant strengths in the qualities that make for an excellent law clerk. She is intelligent, mature, and focused and he will fit well into your chambers. I recommend her without reservation.

Sincerely,

David Rudovsky
Senior Fellow
Tel.: (215) 898-3087
E-mail: drudovsk@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 05, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Clerkship Applicant Catherine Dema

Dear Judge Sanchez:

I write to enthusiastically recommend Catherine Dema, a student in my Education and Disability Law seminar, for a clerkship in your chambers. The seminar environment has enabled me to develop a close relationship with Catherine who has impressed me consistently throughout the semester with her intellectual curiosity, a deep engagement with the law, collegiality, and strong writing skills.

First, Catherine is intellectually curious and seeks to understand a case from multiple angles. She consistently raised questions, the answers to which, complicated standard narratives and perspectives on an issue. What are the stakes? What are the stakes of an erroneous outcome? Who bears the cost of error? In the context of special education law, for example, Catherine sought to understand the equities of the administrative process and the challenges parents face navigating a system designed as a foil to the adversarial process. Does this informality track the realities and experiences of the users? Catherine's insights deepened and shaped the direction of class discussions for the betterment of the group. Catherine connected dots across areas of law, for example, thinking through the Individuals with Disabilities Education Act as spending clause legislation, and what this means for its interpretation when situated in this broader framework. She can identify the specific questions of a case and zoom out to understand how the application of a statute to a particular set of facts operates in the broader context of the statute's (and similar statutes') interpretation.

Second, Catherine displays an eagerness and willingness to engage with others in collective thinking about legal interpretation and analysis. She takes time to listen to her peers and makes space for others in the conversation. This practice earned her the respect of her peers in the classroom.

Third, Catherine's writing is clear, organized, and nuanced. Catherine's research paper for the Education and Disability Law seminar examines the legal category of "emotional disturbance" under the Individuals with Disabilities Education Act and its interpretation by administrative judges and federal courts. The paper requires her to engage with Congressional intent, legislative history, administrative decisions, and those of federal courts. She has navigated these materials seamlessly. Of note, Catherine has also displayed the flexibility and resilience required of the best researchers. When her initial research challenged her early thesis, she made the necessary adjustments with a respect for the research process that is less common among law students. Her time management skills created space for her research process to unfold successfully.

Catherine Dema will make a fantastic law clerk. Her innate curiosity about the law coupled with strong writing skills and collegiality will enhance your chambers. Please do not hesitate to reach out with any questions about Catherine.

Sincerely,

Jasmine E. Harris
Professor of Law
jashar@law.upenn.edu

VIRGINIA CAPITAL REPRESENTATION RESOURCE CENTER

2421 IVY ROAD, SUITE 301
CHARLOTTESVILLE, VIRGINIA 22903

(434) 817-2970 TELEPHONE
(434) 817-2972 FACSIMILE

May 1, 2023

Letter of Recommendation in Support of Catherine G. Dema
for a Judicial Clerkship

Your Honor:

Please accept this letter in strong support of Catherine G. Dema's application for a judicial clerkship position. I met and became familiar with Catherine's work as the Executive Director of the Virginia Capital Representation Resource Center (VCRRC) when I supervised her as a law clerk during the summer of 2022. Catherine had just completed her first year of law school at the University of Pennsylvania.

VCRRC is a small not-for-profit law firm founded in 1992 to improve the quality of representation in capital cases through direct representation, consultation, and education services. In the decades that followed, VCRRC served both as counsel in direct representation of clients sentenced to death and as a centralized resource office providing consultation, training, and assistance to those representing people facing death sentences in Virginia.

At VCRRC, law clerks like Catherine serve on teams representing our clients. They worked directly with lawyers, investigators, and legal assistants on current issues in the litigation. Clerks help to identify, investigate, research, develop, and draft the factual and legal bases for the post-conviction claims in both state and federal courts. Their work directly impacts the litigation of client's cases.

Catherine was an excellent and welcome addition to our litigation teams. Two projects she completed during the summer were on behalf of people sentenced to death in federal courts in Texas and Virginia. The first was part of a reply to the government's motion to dismiss claims in a petition for relief under 28 U.S.C. § 2255 and involved an analysis of the sufficient of trial counsel's objections to witness testimony. It required intensive review and research of the statutes making up the Federal Death Penalty Act as well as the Federal Rules of Evidence. In the second project, also part of a Section 2255 case, Catherine developed arguments regarding the propriety of bifurcating an evidentiary hearing in a manner that would limit review to only a single requisite element of the claim. The government had argued that a narrow review would be more efficient. (The judge ultimately ruled in our favor.)

The nature of our work required Catherine to work independently and in collaboration with others. Finished drafts were required in adherence with deadlines. Quality product was expected. (I have come to appreciate that some members of our small staff are particularly demanding with regard to the detail and precision of written work product.) Catherine performed remarkably in each area. She asked good questions, sought clarity when appropriate, and delivered immediately useful products on time and in the form requested. She was a pleasure to work with as well, mindful of everyone's time while remaining personable and engaging, appropriate to the situation, and with a good sense of humor (a trait we value).

The stakes for our clients and staff are especially high, and scrutiny by our opponents and the courts can be exacting. Catherine respected these circumstances, and her work suggested she was not intimidated or hampered by them. I believe she is particularly well-suited to be part of a team in chambers, and will contribute significantly to what I imagine can be a fast-paced environment that also requires thoughtful analysis, research, and writing.

Based on my experience, I believe Catherine would make a significant contribution to assist the Court in meeting its various goals and responsibilities. I encourage the Court to get to know her yourself. I think you will find her to be an asset to your chambers.

Wishing you all the best.

My regards,

Rob Lee
Executive Director

Catherine G. Dema
201 S 25th St. Apt. 224
Philadelphia, PA 19103
cdema@pennlaw.upenn.edu
(816) 305-9935

This writing sample is an excerpt from a persuasive brief I wrote for an Appellate Advocacy course at Penn Carey Law. The brief argues there was a violation of the Fourth Amendment right against unreasonable search and seizure when police conducted a vehicle stop based on an informant tip and frisked a passenger of the vehicle. The brief was originally 24 pages. The excerpt includes the argument portion of the brief. I have omitted the Statement of the Issues, Statement of the Case, and Summary of the Argument. This brief received general, nonspecific feedback through its development.

Argument

I. Police lacked a particularized and objective basis for suspecting a vehicle was involved in criminal activity, given the reliability and content of the tip directing police to the vehicle.

Standard of Review

In reviewing the denial of a motion to suppress, the Third Circuit exercises de novo review over the district court's legal conclusions and exercises clear error review over factual findings. *United States v. Price*, 558 F.3d 270, 276 (3d Cir. 2009). Whether police had sufficient reasonable suspicion to stop a vehicle, including the subordinate issues of reliability and content of the tip leading police to the vehicle, is a question of law. *United States v. Brown*, 159 F.3d 147, 148 (3d Cir. 1998). Review of this issue is therefore de novo. *Id.*

Discussion

Police officers may not conduct warrantless vehicle stops without probable cause unless officers have a reasonable suspicion the particular persons in the vehicle are involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 30 (1968); *see also Navarette v. California*, 572 U.S. 393, 396 ("The Fourth Amendment permits brief investigative stops—such as the traffic stop in this case—when a law enforcement officer has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'").

Police lacked a particularized and objective basis for stopping Mr. Washington's vehicle because they conducted the stop based on an unreliable and insufficient tip. Because the vehicle seizure was unlawful, this Court must suppress the evidence obtained in the course of the stop under the exclusionary rule and the fruit of the poisonous tree doctrine.

a. The informant tip was insufficiently reliable and lacked sufficient content to motivate reasonable particularized suspicion that Mr. Washington's vehicle was involved in criminal activity.

Police conducted the stop based solely on an insufficient informant tip from White about suspected credit card fraud. Informant tips prompting investigatory stops are evaluated for their reliability and content to determine whether officers had reasonable suspicion to conduct the stop. *United States v. Goodrich*, 450 F.3d 552, 560 (3d Cir. 2006); *United States v. Valentine*, 232 F.3d 350, 355 ("The reliability of a tip, of course, is not all that we must consider in evaluating reasonable suspicion; the content of the tip must also be taken into account, as well as other surrounding circumstances.").

Reasonable suspicion in an investigatory stop requires officers have a particularized and objective basis to suspect criminal activity was afoot. *Goodrich*, 450 F.3d at 552 ("The content of the tip, concomitantly, must provide a particularized and objective basis for suspecting (1) the particular persons stopped (2) of criminal activity."); *Florida v. J.L.*, 529 U.S. 266, 272 (2000) ("The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person."). "The ultimate question is whether a reasonable, trained officer standing in [Donnelly's] shoes could articulate specific reasons justifying [the vehicle's] detention." *Johnson v. Campbell*, 332 F.3d 199, 206 (3d Cir. 2003).

Courts evaluate the reasonableness of the stop in light of the collective police knowledge at the time of the stop. *See United States v. Whitfield*, 634 F.3d 741 (3d Cir. 2010) (applying the collective knowledge doctrine to a *Terry* stop involving a fast-paced and dynamic situation wherein "officers worked together as a unified and tight-knit team"). Accordingly, the entire tip provided by White to police dispatch, Harris, and—as well as Donnelly's observations before the stop—is relevant to evaluating the stop's unreasonableness.

Officers unreasonably stopped the vehicle because they relied on an informant of questionable credibility providing a tip requiring officers to assume a connection between Mr. Brown and Mr. Washington not present in the tip's content. The tip's content lacked a particularized and objective basis for suspecting Mr. Washington and his vehicle of credit card fraud. Such a suspicion relies on presumed connections between two separate customers, not a logically necessary or objective connection.

i. The informant was insufficiently reliable in providing the tip motivating police officers' stop of Mr. Washington's vehicle.

White was insufficiently reliable in providing the tip. He relayed second and third-hand information to police about Mr. Washington and Mr. Brown's actions. Officers hearing from White could not determine the credibility of those with personal knowledge of the Mr. Brown's transaction or Mr. Washington's transaction. Officers should have known White relayed the information through the lens of his mall experience, which is not the kind of expertise and experience officers may rely on in determining the reasonableness of a tip-motivated stop. This Court must consider informant reliability in assessing the reasonableness of a stop as part of the totality of the circumstances motivating the stop.

White was an unreliable informant because he conveyed information about which he lacked personal knowledge. White provided in-person information in addition to his phone call to police dispatch, but only White's reports of his own actions could be evaluated for their credibility. *See Valentine*, 232 F.3d at 354 (describing face-to-face tips as more reliable than anonymous tips because "the officer has an opportunity to assess the informant's credibility and demeanor" in a face-to-face tip). Police had no opportunity to assess the credibility of the sales associate who identified Mr. Washington as suspicious or the store manager who observed Mr. Brown's transaction. White himself did not witness suspicious behavior—he reported suspicions

of other mall employees. White's tip lacked the typical indicia of reliability present in an in-person tip. *See id.*; *see also J.L.*, 529 U.S. at 269 (describing indicia of reliability necessary for an anonymous tip to be reliable).

In light of the total circumstances, White's tip is not sufficiently reliable. Even if officers believed White's demeanor, voice and other factors supported his credibility, *Valentine*, 232 F.3d at 355, he explicitly relayed information from sources officers could not evaluate. White presented his understanding of the situation after evaluating the information shared with him and in light of his experience as a security employee. Police may draw on their own experience and expertise when determining the reasonableness of conducting an investigatory stop, but they may not similarly rely on the presumed experience and knowledge of an informant. *See United States v. Arvizu*, 534 U.S. 266, 273 (2002) (permitting "officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person'" when making reasonable suspicion determinations).

While Neiman Marcus employed White to protect merchandize, officers lacked information about White's skill and competency when they assumed the tip was reliable based on White's demeanor. In fact, White had a history of termination for overzealously stopping customers. While officers could not have known White's history, they should not have accepted his expertise as they would police expertise. White relayed second and third-hand information about potentially suspicious activity as a mall employee. He was an insufficiently reliable informant given the content of his tip to police.

ii. The informant tip lacked sufficient content to create reasonable suspicion Mr. Washington's vehicle and the particular persons stopped were engaged in criminal activity.

The content of White's tip was insufficient to motivate the stop of Mr. Washington's vehicle because it did not sufficiently connect Mr. Washington to any criminal activity. A tip's content is insufficient unless it simultaneously provides a "particularized and objective basis for suspecting (1) the particular persons stopped (2) of criminal activity." *Goodrich*, 450 F.3d at 560. White's tip failed to provide a particularized and objective basis for police's suspicion of Mr. Washington's vehicle of criminal activity.

Suspected of Criminal Activity

Officers unreasonably stopped Mr. Washington's vehicle because the tip failed to allege specific criminal activity of Mr. Washington and his vehicle. White's tip connected the vehicle only to Mr. Washington, whose allegedly suspicious activities included purchasing a Prada bag as someone from New York. The tip did not connect the vehicle to Mr. Brown's more suspicious conduct or any confirmed fraud. White's tip did not provide any detail indicating Mr. Washington was involved in criminal activity. *See United States v. Ubiles*, 224 F.3d 213 (3d Cir. 2000) (holding a stop unreasonable when a tip alleged the defendant had a gun in a crowded area where gun possession was not illegal failed to allege criminal activity).

While White suspected criminal activity was afoot, Mr. Washington engaged in purely lawful activities that did not indicate suspicion. An officer may not conduct a stop simply because some criminal activity is afoot. *United States v. Brown*, 159 F.3d 147, 149 (3d Cir. 1998). Officers must have particularized suspicion against the stopped individual. *Id.* Even though "a reasonable suspicion of criminal activity may be formed by observing exclusively

legal activity," *Ubiles*, 224 F.3d at 217, here, the tip failed to sufficiently allege Mr. Washington's vehicle was tied to criminal activity.

When individual innocent factors are used for a tip to suspect criminal activity, the combination of factors "must serve to eliminate a substantial portion of innocent [customers]." *United States v. Mathurin*, 561 F.3d 170 (3d Cir. 2009). White, and police officers, suspected Mr. Washington specifically only because he had New York identification and bought a Prada bag. Despite mall employee reports of past issues with New Yorkers, the factors involved do not serve to eliminate a substantial portion of innocent customers.

White himself could not articulate specific reasons the sales associate deemed Mr. Washington suspicious, but referenced security employees evaluating whether a customer looks like they "can't afford the item they are buying." (App. 105).[1] White's inability to articulate why he singled out Mr. Washington as suspicious shows the content of the tip lacked an objective and particularized basis for suspicion. Mr. Washington's conduct alone does not provide officers with reasonable suspicion he was involved in criminal activity.

Mr. Brown's conduct, too, does not provide reasonable suspicion Mr. Washington was involved in criminal activity. Mr. Brown's innocent actions were subject to greater suspicion because officers knew two of Mr. Brown's credit cards declined in his attempted transaction. Yet, a suspicious transaction occurring after several minutes after Mr. Washington's departure does not provide sufficient suspicion Mr. Washington was involved in criminal activity.

Courts evaluate reasonable suspicion based on a tip given the totality of the circumstances. *Brown*, 448 F.3d at 246–47 ("In evaluating whether there was an objective basis for reasonable suspicion, [the court] consider[s] 'the totality of the circumstances—the whole

[1] Racial biases may contribute to the belief Black men are less likely to afford expensive purchases, regardless of whether their other actions suggest fraud or suspicious activity.

picture.'"). Mr. Brown's actions fifteen minutes after Mr. Washington's purchase do not provide adequate suspicion Mr. Washington or his vehicle were involved in criminal activity. As one of the largest in the country, the mall made several calls alerting police of suspicious activity. Suspected suspicious activity at the mall on a Saturday afternoon fifteen minutes after Mr. Washington's purchase by another New Yorker would not serve to exclude a substantial portion of innocent customers. Mr. Brown's conduct does not provide sufficient reasonable suspicion against Mr. Washington.

Particular persons stopped

White's tip failed to particularize suspicion against the particular persons stopped—Mr. Washington and his vehicle—because such particularized suspicion requires an improper, unsupported inference Mr. Brown and Mr. Washington were connected. White told police that Mr. Washington purchased a Prada bag, presented New York identification, and left the mall to get in his vehicle. White told police that Neiman Marcus had issues with fraud with people from New York, but this information is vague, unconfirmed, and does not provide reasonable suspicion Mr. Washington himself engaged in criminal activity sufficient to justify a stop. Police officers lacked particularized suspicion against Mr. Washington and his vehicle; they conducted the stop because officers improperly assumed a connection between Mr. Washington and Mr. Brown and his failed purchases.

Police lacked an objective basis on which to assume a connection between Mr. Brown and Mr. Washington because the two men were never seen together, initiated transactions fifteen minutes apart, and left the store to different locations. White himself witnessed Mr. Washington leave the mall, enter the parking lot, get in his vehicle and leave. White explicitly told police he trailed Mr. Washington to his vehicle. After following Mr. Washington, White learned of Mr.

Brown's transaction and proceeded to follow him. White trailed Mr. Brown out of the Gallery to the Pavilion—a separate section of the mall. Mr. Brown entered the Pavilion, at which point White called police and notified them of trailing Mr. Brown to the crosswalk between mall sections. White did not observe Mr. Brown in the process of leaving the mall or getting in any car, let alone Mr. Washington's. The content of White's tip described these two separate paths and did not insinuate the men were seen together.

A sufficient tip's content must provide a particularized and objective basis for suspecting the particular individual of criminal activity. *Goodrich*, 450 F.3d at 560. White's tip failed to provide a particularized suspicion of Mr. Washington because the only connection between the two the tip alleged was that both men presented New York identification and initiated purchases of Prada bags fifteen minutes apart. The tip did not provide an objective connection between Mr. Brown and Mr. Washington or between Mr. Brown and Mr. Washington's vehicle. Accordingly, the tip's content insufficiently particularized suspicion to Mr. Washington's vehicle. The stop was unreasonable because White's tip did not allege Mr. Washington was involved in criminal activity nor did it particularize suspicion against Mr. Washington.

Donnelly's observations of the vehicle prior to the stop did not corroborate or strengthen any suspicion of criminal activity. Donnelly did not testify to any abnormal or suspicious behavior conducted by the vehicle. The tip's content, therefore, provided the entire basis for the stop despite failing to particularize suspicion against Mr. Washington or allege Mr. Washington was involved in criminal activity.

b. The credit cards obtained from Mr. Brown in the course of the illegal stop must be suppressed under the "fruit of the poisonous tree" doctrine.

Because Donnelly unreasonably stopped Mr. Washington's vehicle, the evidence obtained from Mr. Brown in the course of the stop must be suppressed. As a passenger in an illegally stopped vehicle, Mr. Brown has standing to object to the fruits of the unlawful seizure.

When police conduct an illegal stop of a vehicle, all passengers in the vehicle are also seized. *See Arizona v. Johnson*, 555 U.S. 323, 327 (2009) ("For the duration of a traffic stop . . . a police officer effectively seizes 'everyone in the vehicle,' the driver and all passengers"); *United States v. Mosely*, 454 F.3d 249, (3d Cir. 2006). A passenger is seized for the duration of the stop. *Johnson*, 555 U.S. at 333. Seized passengers have standing to object to the stop and seek to suppress "evidentiary fruits of [an] illegal seizure under the fruit of the poisonous tree doctrine." *Mosley*, 454 F.3d at 253. When there is a factual nexus between the illegal stop and the evidence obtained, the evidence is improperly obtained and is fruit of the poisonous tree that must be suppressed. *Id.* at 254.

When officers illegally stopped Mr. Washington's vehicle, Mr. Brown was seized, and police improperly obtained evidence from Mr. Brown. Because Mr. Brown is challenging the illegal vehicle seizure, not an illegal vehicle search, he has standing to challenge evidence obtained in the course of the seizure. *Id.* at 253. Here, the credit cards retrieved from Mr. Brown's sock are the fruit of the illegal stop. There is no question of the factual nexus between the stop and the evidence obtained. *Id.* at 256 ("Where the traffic stop itself is illegal, it is simply impossible for the police to obtain the challenged evidence without violating the passenger's Fourth Amendment rights."). The evidence found on Mr. Brown must be suppressed.

II. Police lacked a reasonable belief Mr. Brown was armed and dangerous given Mr. Brown moved in a seized vehicle with tinted windows suspected of involvement with credit card fraud.

Standard of Review

In reviewing the denial of a motion to suppress, the Third Circuit exercises de novo review over the district court's legal conclusions and exercises clear error review over factual findings. *Price*, 558 F.3d at 276. Whether police had a reasonable suspicion Mr. Brown was armed and dangerous is a question of law. *United States v. Edwards*, 53 F.3d 616, 618 (3d Cir. 1995) (conducting plenary review over whether the facts supported a reasonable inference the suspect was armed and dangerous). Review of the issue is therefore de novo. *Id.*

Discussion

Burnett's frisk of Mr. Brown violated the Fourth Amendment protections against unreasonable searches. Even if the court rules that the stop was reasonable, the frisk leading to recovery of evidence against Mr. Brown mandates suppression of the evidence.

A frisk is "a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment." *Terry* 392 U.S. at 17. A frisk is unreasonable unless officers had a reasonable belief the suspect is armed and dangerous. *Id*. Police officers may not conduct a reasonable search for weapons unless they have "reason to believe that [they are] dealing with an armed and dangerous individual." *Id.* at 27. An officer does not need to be certain a suspect is armed. *Id.* If a reasonable officer in their position would be warranted in the belief the suspect is armed and dangerous, then a frisk is reasonable. *Id.* Officers must have a particularized, articulable suspicion the suspect is armed and dangerous.

Burnett unreasonably frisked Mr. Brown because he lacked a reasonable belief Mr. Brown was armed and dangerous at the time of the frisk. Before Burnett frisked Mr. Brown, he

saw Mr. Brown's empty hands and Mr. Brown complied with all requests. Burnett lacked a sufficient particularized suspicion that Mr. Brown was armed and dangerous at that moment, so Burnett unreasonably searched Mr. Brown. The evidence recovered should be suppressed under the fruit of the poisonous tree doctrine.

a. Officer Burnett unreasonably frisked Mr. Brown because a reasonable officer in Burnett's position could not provide a reasonable, articulable suspicion that Mr. Brown was armed and dangerous at the time of the frisk.

Burnett lacked reasonable suspicion Mr. Brown was armed and dangerous when he frisked Mr. Brown because any potential risk relaxed before the frisk. Even if officers had reason to stop the car, they still needed particularized reasonable suspicion Mr. Brown in particular was armed and dangerous to justify the frisk. *Terry*, 392 U.S. at 21 ("[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."). The test is "whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Id.*

Suspected credit card fraud does not make it more likely Mr. Brown was armed and dangerous. Police officers suspected Mr. Washington's vehicle of credit card fraud and had no particularized information about any passenger. Credit card fraud at the mall is not a violent crime, nor is it a bold crime whose nature suggests armed perpetrators. *See Edwards*, 53 F.3d at 618 (holding that an attempted daylight bank robbery "could lead one to believe that the perpetrators might have armed themselves to facilitate their escape if confronted").

In *Edwards*, police were notified of credit card fraud occurring at a bank in broad daylight. *Id.* The court deemed officers' suspicion the passengers were armed and dangerous reasonable because committing fraud at a bank in broad daylight is a risky activity where

perpetrators could reasonably have weapons to use in the event they were confronted. *Id.* Unlike in *Edwards,* here police suspected the vehicle of involvement in low-level credit card fraud occurring at a busy mall on a Saturday afternoon. The suspected criminal activity did not suggest armed perpetrators, so the suspected crime did not make it more likely that Mr. Brown was armed and dangerous.

Burnett's stated reasons for frisking Mr. Brown included the vehicle's tinted windows and Mr. Brown's movements in the backseat of the car. *See Leveto v. Lapina*, 258 F.3d 156, 165 (evaluating the facts police officers alleged motivated the frisk in finding the search of the defendant unreasonable). Burnett acted on his suspicions by opening the passenger door and ordering the passenger out. Burnett observed Mr. Brown and saw he lacked a weapon, yet Burnett still proceeded with the frisk. Burnett's provided reasons fail to justify the frisk because they do not particularize a suspicion Mr. Brown was armed and dangerous after he already exited the vehicle.

Burnett lacked particularized suspicion Mr. Brown was armed and dangerous based on the tinted windows because concerns about the windows should have been relaxed after Mr. Brown exited the car. Tinted windows may contribute to concerns occupants are armed. Officers could have requested all vehicle occupants exit the car if they feared for their safety due to the tinted windows. Just because a vehicle is connected to criminal activity, all occupants are not automatically connected to the criminal activity. *See Ybarra v. Illinois*, 444 U.S. 85, 90 (1979) (holding that possession of a warrant to search a premises alone is not sufficient to justify a pat down of a person found on the premises). Officers connected Mr. Washington, not other passengers, to suspected credit card fraud. No officers, including Burnett, knew the passengers' identities nor whether passengers were connected to the suspected fraud.

Suspecting the vehicle of criminal activity does not justify frisking passengers unless an officer in the situation would reasonably believe that specific passenger was armed and dangerous. In *Ybarra v. Illinois*, police officers had a warrant to search a bar; the warrant specifically mentioned a bartender, but no customers. *Id.* at 87–88. Officers proceeded to frisk patrons while executing the warrant. *Id.* at 88. They frisked the defendant two distinct times before retrieving drugs from his possession on the second frisk. *Id.* at 88–89. Officers had no probable cause to suspect the patrons were involved in illegal activity. *Id.* at 90–91. The court ruled that officers lacked reasonable suspicion to frisk the defendant because no officers recognized him as a person with a criminal history or had any reason to think he may assault the officers. *Id.* at 93. The defendant's "hands were empty [and he] gave no indication of possessing a weapon, made no gestures or other actions indicative of an intent to commit an assault, and acted generally in a manner that was not threatening." *Id.* The state could not articulate specific facts that would have justified an officer in suspecting the defendant was armed and dangerous. *Id.*

Mr. Brown's presence in a vehicle suspected of criminal activity did not justify Burnett's frisk. At the time of the stop, Mr. Brown was not connected to the suspected fraud. Mr. Brown complied with all officer orders and had empty hands when he exited the car. Burnett's claims that tinted windows and Mr. Brown's movements in the car motivated his frisk do not articulate specific facts that would have justified an officer in suspecting Mr. Brown was armed and dangerous at the time of the frisk.

Mr. Brown's movements in the backseat do not justify the frisk because concerns about his movements should have been relaxed after Mr. Brown exited the car. When Burnett saw Mr. Brown "disappear" by leaning over, Burnett opened the car door. Burnett saw Mr. Brown's hand

near his foot, as though he stashed something under the seat or retrieved something. Burnett grabbed Mr. Brown and ordered he exit the car. Mr. Brown complied. At that moment, if Mr. Brown possessed a weapon, it would have been in one of two locations: under the seat or in Mr. Brown's hand.

When Mr. Brown exited the car, he could no longer reach any potential weapon under the seat. Burnett saw Mr. Brown's empty, weaponless hands. Once Mr. Brown exited the car, away from the seat, and complied with orders any fears Burnett had that Mr. Brown was armed and dangerous should have dissipated. *See United States v. Moorefield*, 111 F.3d 10, 11 (3d Cir. 1997) (holding that defendant's failure to follow instructions contributed to officers' reasonable suspicion the defendant was armed and dangerous).

The factors Burnett presents as motivating the stop fail to justify Burnett's frisk of Mr. Brown. In *United States v. Brown*, an officer frisked two suspects solely because a robbery occurred several blocks away. *Brown*, 448 F.3d at 243. The officer said he planned to frisk the suspects regardless of their compliance. *Id.* The court held officers lacked reasonable suspicion to frisk the suspect given the totality of the circumstances because "each of the factors argued to support reasonable suspicion . . . and frisk him . . . underwhelms." *Id.* at 252. Similarly, Burnett patted down Mr. Brown primarily due to suspected credit card fraud, and each justification for the frisk underwhelms. A reasonable officer in Burnett's position would not have reasonable suspicion Mr. Brown was armed and dangerous at the time of the frisk.

Considering the totality of the circumstances, a reasonable officer in Burnett's position would not have reasonably suspected Mr. Brown was armed and dangerous at the time of the frisk. Given Burnett's articulated reasons, his description of Mr. Brown reaching below his seat, Mr. Brown's compliance with Burnett's orders, and Mr. Brown's empty hands upon exiting the

vehicle, Burnett lacked reasonable suspicion Mr. Brown was armed and dangerous at the time of the frisk. Burnett, therefore, unreasonably frisked Mr. Brown.

b. The credit cards obtained from Mr. Brown due to the illegal frisk must be suppressed under the "fruit of the poisonous tree" doctrine.

Because Burnett unreasonably frisked Mr. Brown, the evidence obtained from Mr. Brown due to the frisk must be suppressed. Burnett frisked Mr. Brown so Mr. Brown has standing to object to the fruits of the poisonous tree.

When police make an illegal search and there is a factual nexus between the illegal search and the evidence obtained, the evidence is improperly obtained and is fruit of the poisonous tree that must be suppressed.

The credit cards retrieved from Mr. Brown's sock are the fruit of the illegal stop. There is no question of the factual nexus between the frisk and the evidence obtained. *See Mosely*, 454 F.3d at 256 ("Where the traffic stop itself is illegal, it is simply impossible for the police to obtain the challenged evidence without violating the passenger's Fourth Amendment rights."). Thus, this Court must suppress the evidence.

Applicant Details

First Name	**A Patrick**
Last Name	**DeSabato**
Citizenship Status	**U. S. Citizen**
Email Address	**patrick.desabato@temple.edu**
Address	**Address** **Street** **7504 Valley Avenue** **City** **Philadelphia** **State/Territory** **Pennsylvania** **Zip** **19128** **Country** **United States**
Contact Phone Number	**2158504380**

Applicant Education

BA/BS From	**Columbia University**
Date of BA/BS	**May 2013**
JD/LLB From	**Temple University--James E. Beasley School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=23905&yr=2011**
Date of JD/LLB	**May 15, 2024**
Class Rank	**20%**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/ Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Mulderrig, Ryan
rmulderrig@philasd.org
Butensky, Ken
ken.butensky@phila.gov
Manners, Jane
jane.manners@temple.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

A. Patrick DeSabato
7504 Valley Avenue, Philadelphia, PA 19128 | (215) 850-4380 | patrick.desabato@temple.edu

June 11, 2023

The Honorable Juan R. Sanchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street
Room 14613
Philadelphia, PA 19106

Dear Judge Sanchez:

I am applying for a clerkship in your chambers to offer my extensive professional experience, well-rounded educational pedigree, and demonstrated record of academic success which includes extensive writing and experiential learning in addition to traditional doctrinal courses.

I have charted an atypical but valuable path to law school. After completing my undergraduate education where I was a Dean's List student and varsity athlete, I earned a master's degree, learning about sociology, critical race theory and legal compliance in relation to sports management. I began my career in Human Resources, where I conducted workplace investigations, worked closely with in-house legal counsel on important, complex and delicate issues like discrimination, harassment and bullying in the workplace. I honed my natural ability to understand people and was trained in legal doctrines and risk management. As I considered a professional pivot to law school, I began a prosperous career in sales management. I believe that my experience in sales will be the most important thing I do in my career because of what it taught me about managing people's emotions and developing a team's skills in a fast-paced, high-pressure commission environment.

I appreciated the impact I've been able to have on people in my career; I wanted to become an attorney to expand the scope of that impact. My experiences, an excellent academic record and superior testing scores earned me a full scholarship at the Temple University Beasley School of Law. At Temple, I have focused my on experiential learning by networking, engaging in practicums and clinics, and taking on extra projects like being a teaching assistant helping first-year students with research, writing and citations. I relish hard work, complex issues, and building relationships. I have challenged myself academically, intellectually and personally while managing the responsibilities of a growing family along with my legal career. This balance is what sets me apart from my peers.

I believe that my drive, focus and experience can be an asset to your chambers next year. I appreciate your consideration, and look forward to hearing from you soon.

Respectfully,
A Patrick DeSabato

A. Patrick DeSabato
7504 Valley Avenue, Philadelphia, PA 19128 | (215) 850-4380 | patrick.desabato@temple.edu

EDUCATION

Temple University Beasley School of Law, Philadelphia, PA
Juris Doctor expected May 2024 GPA 3.57 Class Rank Top 25%
Honors: Beasley Scholarship Recipient; Dean's List: Fall 2021, Fall 2022, Spring 2023
Activities: Student Academic Success Counselor, Student Disciplinary Committee; Social Committee; Sports & Entertainment Law Society, Legal Research & Writing Teaching Assistant, Temple Pre-College Criminal Law Workshop Instructor

Indiana University, Bloomington, IN
M.S., Sports Management and Athletic Administration, December 2014 GPA 3.96

Columbia University in the City of New York, New York, NY
B.A. in Psychology, May 2013 GPA 3.61
Honors: Dean's List (Spring 2011, Spring 2012, Fall 2012)
Activities: Cross Country, Indoor Track, Outdoor Track Teams

PROFESSIONAL EXPERIENCE

Troutman Pepper Philadelphia, PA
Summer Associate (May 2023 – July 2023)
Analyze and draft memos and articles on complex legal issues, draft litigation materials, network with firm leaders.

Tort Litigation Unit, Philadelphia City Solicitor Philadelphia, PA
Intern (January 2023 – May 2023)
Prepared motions, answers and objections; performed and observed depositions and arbitrations.

Equal Employment Opportunity Commission Baltimore, MD
Judicial Intern (August 2022 – December 2022)
Researched legal issues, evaluated case files and drafted legal opinions for Administrative Judge Enechi Modu.

Office of General Counsel, School District of Philadelphia, Philadelphia, PA
Legal Intern (June 2022 – August 2022)
Supported District defense in Torts & Employment Litigation. Researched legal topics to inform and influence procedural litigation strategy, designed legal learning programs, implemented compliance initiatives.

Empower Energy Solutions, Philadelphia, PA
Regional Sales Manager, East (January 2021 – August 2021)
Designed & developed novel sales, recruiting and lead generation methodology in Solar industry. Recruited, trained, and developed sales team to drive company and industry growth.

Hello Fresh, Philadelphia, PA
Senior Sales Manager, Philadelphia, PA (April 2018 – December 2020)
Redesigned virtual sales channel in response to the COVID-19 pandemic before leading and scaling development of local and nationwide program. Recruited and developed the largest team and developed the highest volume and sales averages in the US.

Abercrombie & Fitch, Columbus, OH
Associate Relations Representative (November 2015 – February 2018)
Supported 300 U.S. stores in compensation, benefits, and labor law compliance matters. Investigated legal liability issues including discrimination, harassment, and labor laws. Managed HR responsibilities in talent and engagement.

VOLUNTEER & CERTIFICATIONS

Treasurer for neighborhood Homeowners Association (2017-2019)
Camp Counselor at SeriousFun Camp (June 2016, April 2017)
Certified in Workplace Investigative Interviewing Strategies, Wicklander Zulawski & Associates (2016)

TEMPLE UNIVERSITY

OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION

1801 N. BROAD STREET, PHILADELPHIA, PA 19122

OFFICIAL ELECTRONIC TRANSCRIPT

Academic Record of: Anthony P Desabato
Current Name: Anthony P Desabato

Date Issued: 17-JAN-2023
Date of Birth (MM/DD): 08/07
Student ID: 916078365
Level: Law

Issued To: Anthony Desabato
Parchment DocumentID: TWZQWJTT

Course Level: Law

Current Program
Juris Doctor
Major : Law--Full Time

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
INSTITUTION CREDIT:			
2021 Fall			
Law--Full Time			
JUDO 0402	Civil Procedure I	4.00 B+	13.32
Gugliuzza, P			
JUDO 0406	Contracts	4.00 B+	13.32
Mehra, S			
JUDO 0414	Legal Research & Writing	3.00 B+	9.99
Hudson, K			
JUDO 0420	Torts	4.00 A	16.00
Manners, J			
JUDO 0437	Intro to Transactional Skills	1.00 S+	0.00
Monroe, A			
Ehrs: 16.00 GPA-Hrs: 15.00 QPts: 52.63 GPA: 3.51			
Dean's List			
2022 Spring			
Semester Notations:			
DCP (International Law)			
DCP (Legal Research & Writing II)			
DCP (Criminal Law I)			
Law--Full Time			
JUDO 0404	Constitutional Law	4.00 B	12.00
Rahdert, M			
JUDO 0410	Criminal Law I	3.00 A	12.00
Shellenberger, J			
JUDO 0414	Legal Research & Writing	2.00 B	6.00
Carpenter, L			
JUDO 0418	Property	4.00 A-	14.68
Sinden, A			
JUDO 0556	International Law	3.00 B	9.00
Hollis, D			
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 53.68 GPA: 3.36			
********** CONTINUED ON NEXT COLUMN **********			

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Institution Information continued:			
2022 Fall			
Law--Full Time			
JUDO 0460	Trial Advocacy I	2.00 S+	0.00
Roper, M			
JUDO 0540	Evidence	3.00 A-	11.01
Epstein, J			
JUDO 0600	Taxation	3.00 A	12.00
Abreu, A			
JUDO 5001	Equity and Bias in Education	3.00 A	12.00
Rieser, L			
JUDO P490	Practicum: Employment Disc.	3.00 S	0.00
Tavares, B			
Ehrs: 14.00 GPA-Hrs: 9.00 QPts: 35.01 GPA: 3.89			
2023 Spring			
IN PROGRESS WORK			
JUDO 0461	Trial Advocacy II	3.00 IN PROGRESS	
JUDO 0517	Civil Procedure II	2.00 IN PROGRESS	
JUDO 0601	Sports Law	3.00 IN PROGRESS	
JUDO 0735	City Solicitor: Claims	3.00 IN PROGRESS	
JUDO 1072	Promoting Gender Equality	3.00 IN PROGRESS	
In Progress Credits 14.00			

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	46.00	40.00	141.32	3.53
TOTAL TRANSFER	0.00	0.00	0.00	0.00
OVERALL	46.00	40.00	141.32	3.53

********** END OF TRANSCRIPT **********

Bhavesh Bambhrolia
University Registrar

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to heartily recommend Patrick Desabato for a judicial clerkship in your chambers. Patrick was a summer intern in the Office of General Counsel for the School District of Philadelphia during the summer of 2022, after his first year of law school. He was under my direct supervision.

Patrick went to law school after working in business for several years. His maturity, professionalism and work ethic were quickly apparent. He was assigned significant legal research for major litigation involving a new exception to governmental immunity for sexual abuse. He provided a clear and thorough analysis regarding whether the perpetrator of an alleged sexual assault should be joined as a defendant by the School District in the litigation. Ultimately, Patrick's recommendation guided General Counsel's decision on this important strategic issue. It is rare for a legal intern to have such a significant impact on the School District's strategy in major litigation.

Additionally, Patrick performed legal research on a variety of other topics involving labor and employment and tort matters. His researched informed the District's theory of defense in a toxic tort matter brought by an ex-employee. He also provided a 50-state survey of governmental immunity laws addressing sexual abuse claims.

Throughout his twelve weeks with the Office of General Counsel, Patrick assumed an outsized role in providing legal advice to our client. I believe his industriousness, intelligence, integrity and facility for legal research and writing will make him an excellent law clerk.

Sincerely,

Ryan Mulderrig

Ryan Mulderrig - rmulderrig@philasd.org

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I enthusiastically endorse the application of Patrick DeSabato to be a judicial law clerk. Patrick was my student in the City of Philadelphia Law Department, Tort Litigation Unit's clinical program I direct in coordination with Temple University Beasley School of Law. Patrick fully immersed himself in this cliical experience, seeking out various and challenging projects. For example, Patrick drafted thoroughly researched and well-written Preliminary Objections and other written litigation filings. Patrick also conducted two Depositions of plaintiffs. This is a daunting challenge for any law student and requires careful preparation. Patrick acquitted himself most professionally at these depositions and displayed a thorough command of the record. Patrick volunteered for exra assignments, e.g., drafting Answers to Civil Action Complaints in his quest to develop insight on pleadings practice. As reportd by one of the trial attorneys to whom Patrick was assigned, Patrick is "nergentic, a hard-worker, and employed commen sense to issues." Patrick put a lot of time and effort into this clinical. Through his questions, Patrick demonstrated a probing mind coupled with an obvious interest in learning.

During the clinical, each student stands in front of the class and presents Civil Practice Presentations. Patrick led the class through well-researched, interesting and informative presentations. These included a discussion on the new sexual abuse exception to statutory governmental immunity in Pennsylvania. In another, Patrick offered a very impressive, extremely well-researched history of Sovereign Immunity. Patrick delved deeply into the history of the doctrine and how it relates to present day notions of governmental immunity.

I believe that Patrick would be a tremendous asset to any judicial chambers. He will ably assist the court with informed research well-written memoranda and be a respectful and productive sounding-board in the court's deliberations. Patrick possesses a keen, inquisitive intellect while also being a "people person." These trains will serve him and any employer well.

Thank you for allowing me the opportunity to offer my enthusiastic recommendation for Patrick DeSabato's application to your Chambers.

Respectfully,

Kenneth S. Butensky

Ken Butensky - ken.butensky@phila.gov

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

Patrick Desabato is a terrific law student. He's bright, inquisitive, and hard-working: a dedicated scholar with an incisive legal mind. In my 1L Torts class in the fall of 2021, Patrick quickly distinguished himself as a careful and astute reader of cases. In my experience, the first semester of law school is often a disorienting experience for students, as they struggle to make sense of case law and to adjust to an academic environment that is very different from their undergraduate experiences. Success requires discipline and determination. Patrick succeeded brilliantly, quickly distinguishing himself in his class comments (I could always rely on Patrick to provide the correct answer or a judicious comment in class discussion) and in office hours, where his questions revealed the sophistication of his legal analysis and the depth of his understanding. I was delighted and not at all surprised to see that he earned an A on his final exam.

Patrick's maturity, intelligence, and discipline are evident not only in his classroom performance, but also in his resume. As an undergraduate at Columbia University, Patrick made the Dean's List several times over while juggling the time demands of being a three-season varsity runner. After college, he held a range of management positions in industries ranging from apparel to solar energy to youth services. Patrick's experience and evident success in these diverse fields suggests that he possesses certain "soft skills" that will be key to his success in this writing externship, including self-motivation, time management, and an ability to communicate and collaborate with a range of people.

Patrick tells me that he hopes to serve as a judicial clerk to develop his legal research and writing skills "in an environment that requires objectivity and thoroughness," a goal that reflects his awareness of the magnitude of both the responsibility and the opportunity that comes with a judicial clerkship. I am fully confident that Patrick's quick mind and strong grounding in basic legal concepts, together with his impressive drive and discipline, will make him an outstanding addition to your chambers. His colleagues will find him to be dedicated, reliable, whip smart, hard-working, collaborative, and unfailingly enthusiastic. He'll be an excellent team player. I urge you with unreserved enthusiasm to offer him the chance to work in your chambers.

Sincerely,

Jane Manners, J.D., Ph.D.

Jane Manners - jane.manners@temple.edu

A Patrick DeSabato
Writing Sample, adapted from Legal Research & Writing, Spring 2022

MIA J. WARREN, Plaintiff, v. BRIAN F. HARLINS, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION BURLINGTON COUNTY Docket No.: L-3322-12 *Civil Action*

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT, BRIAN F. HARLINS.

FREMONT, STELLA, & THORWALD
255 Court Street
Mount Holly, NJ
Phone: (609) 433-9422
Unique Identifier 631

A Patrick DeSabato
Of Counsel and On the Brief

Table of Contents

Table of Authorities

Cases

PRELIMINARY STATEMENT

Plaintiff Mia Warren's vain attempt to sue defendant Brian Harlins for legal malpractice should not be sustained, and summary judgment should be granted for Harlins. Warren lost her job, and after two years of inaction, she faced a claim with an expired statute of limitations. Despite indicating that she was seeking recovery to stop her employers from discriminating against others, Warren set her sights on her friend, Brian Harlins, a real estate attorney in good standing in the state of New Jersey. Although Harlins offered advice to his friend, his tenuous connection to Warren's claim does not establish his liability. Warren's farfetched lawsuit does not demonstrate that her interaction with Harlins established an attorney client relationship creating a duty of care, nor does Warren show that Harlins' conduct was the proximate cause of her harm.

Harlins' and Warren's informal and minimal interaction relating to this matter did not create an attorney-client relationship. The parties did not create an express or written relationship and no relationship was implied because Harlins did not manifest his consent to represent Warren; to the contrary, he affirmatively declined to represent her with ample time for her to timely seek representation for her claim. Alternately, though New Jersey allows an attorney's duty to non-clients in limited situations, Harlins also did not owe Warren a non-client duty because he did not invite her reliance and any reliance on his opinion in this matter would not be reasonable based on their interaction. Inferring a relationship or duty would be inappropriate in a situation where Harlins did not manifest his consent to represent Warren and affirmatively declined representation.

Harlins' behavior was also not a substantial factor in Warren's lost claim and therefore cannot be considered a proximate cause of her harm. Harlins took adequate steps to allow

Warren to assess the risk of her situation, and she nevertheless allowed the statute of limitations to expire based on her independent, heedless decisions.

The law does not ask an attorney to be an insurer of his opinion, only that an attorney take adequate steps to protect a client from risk. By disclaiming his opinion, clearly stating that he would not be representing Warren, and referring her to an employment firm equipped to evaluate her claim, Harlins took steps that competent counsel would to protect a client. It was Warren's independent decisions that led to the expiration of the statute of limitations. Harlins' conduct, therefore, was not a proximate cause of Warren's harm, which was caused by her personal carelessness.

Based on the foregoing, defendant Brian Harlins respectfully requests that summary judgment be granted in his favor.

STATEMENT OF MATERIAL FACTS

1. Brian Harlins is an attorney in good standing licensed in New Jersey, Delaware and Pennsylvania. He has been a member of the Bar of New Jersey since July, 2017. *Harlins Deposition*, 1.
2. Harlins operates a solo practice in Mount Holly, New Jersey, specializing in real estate. His only experience in employment law was a single class at Rutgers School of Law - Camden. *Harlins Deposition*, 1-2.
3. Harlins met Mia Warren at Rutgers University in 2012. Since graduating, they have communicated frequently, often by Facebook Messenger. Harlins sent Warren messages about law school and his blossoming career as a solo legal practitioner, and Warren sent Harlins messages about challenges working at The Barclay Hotel and romantic struggles with Isabel Richardson, the daughter of Barclay Hotel owners Elena and Bill Richardson.

4. Warren married Isabel Richardson in 2017. In late April 2019, Warren served Isabel Richardson with divorce papers. *Warren Deposition,* 16.
5. On May 1, 2019, Warren was terminated from her employment at The Barclay Hotel. In her termination letter, Elena Richardson cited Warren's divorce as the reason for her termination. *Termination Letter, 1-2.*
6. On May 3, 2019, Warren messaged Harlins and told him that she had been fired "Because [she] filed for DIVORCE." *Facebook Messages,* 8.
7. On May 4, 2019, Warren messaged Harlins on Facebook Messenger to "[ask] him to do [her] a favor… before [she] took things any further." *Warren Deposition,* 20. She asked, "Would you please look into whether I have an employment discrimination claim? Can I sue them?" Harlins responded, "Employment law isn't my area at all, but I'll see what I can find out…" *Facebook Messages,* 9-10. Prior to his deposition, Harlins had never seen Warren's termination letter. *Harlins Deposition,* 4.
8. Warren never signed a contract, paid a fee or submitted a retainer to Harlins, although when Warren said on May 6, 2019, "Please let me know how much I owe you." Harlins declined to accept payment and comforted his friend, saying, "You don't owe me anything, buddy. Don't worry about that. We're not gonna let them get away with this!" *Facebook Messages,* 10.
9. Harlins testified that he "didn't want to take her case and… thought [he] made that clear." *Harlins Deposition,* 8. Eventually, with "a little" research, Harlins informed Warren that she did not "have a federal claim but [she] probably [did] under NJ's nondiscrimination law – the LAD (Law Against Discrimination)." *Facebook Messages,* 10-11. He also

informed her that "the statute of limitations in NJ for most actions is 6 years." *Facebook Messages,* 10-11.

10. When Warren expressed concern that prospective employers would think she was a "troublemaker" and asked Harlins if she should "hurry and file something," he responded that it was "better to trust your instincts and wait a while – at least til you find a new gig." *Facebook Messages,* 11. Harlins testified that he offered this advice, thinking it "made sense to concentrate on finding a job, since her financial situation seemed more urgent at the time…" *Harlins Deposition,* 9.
11. Per Warren's deposition, she did not expect Harlins to represent her in court or and did not ask him to file anything on her behalf. *Warren Deposition*, 21.
12. On June 27, 2019, Harlins sent a letter to Warren stating that he was not representing her in this matter. Clarifying that he is not an employment law expert, Harlins also offered a referral to Johnson & Leibovitz, a law firm that "works on employment discrimination cases." (*Ex. D-1 Harlins Ltr to Warren*). Warren acknowledged having received the letter. *Warren Deposition,* 25-26.
13. In late 2020, acting on the advice from Harlins' letter, Warren met with Kerrie Schulman of Johnson & Leibovitz. Warren received a follow-up letter from Schulman on December 15, 2020, noting that they had discussed Warren's claim, that Warren was aware of the two-year statute of limitations, and that Warren had been unwilling to pay a deposit to retain the firm Johnson & Leibovitz. *Ex. D-2 J&L Ltr to Warren*, 1. Warren's meeting with Schulman, and the receipt of Schulman's letter, occurred while Warren's NJ LAD claim was still timely. *Warren Deposition*, 26-27.

14. Warren, in her deposition, stated that she did not take Schulman's opinion seriously because she "didn't like her. She seemed shady and [Warren] didn't trust her." *Warren Deposition*, 27.
15. Warren began work on August 6, 2020 at The Mayfair Hotel in Philadelphia, PA. Her NJ LAD claim was still timely when she found this new job. *Warren Deposition*, 1.
16. After meeting with Schulman and beginning work at The Mayfair, Warren testified that she was furloughed and had "a lot of personal stuff going on," and "got furloughed for awhile and the whole thing sort of fell out of [her] head for a little bit." *Warren Deposition*, 24.
17. In August 2021, approximately three months after the NJ LAD Statute of Limitations had expired and a full year since Warren began working at The Mayfair, Warren contacted law firm Ballantyne and Brulov to seek legal counsel. *Warren Deposition*, 25.

ARGUMENT

Summary judgment should be granted for Harlins because the evidentiary materials do not require evaluation by a jury and may be most efficiently decided as a matter of law. Summary Judgement is "designed to provide a prompt, businesslike and inexpensive method of disposing of any case." *Brill v. Guardian Life Ins. Co. of Am.*,142 N.J. 520 (1995). Summary judgment is granted when there is "no genuine issue as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law." This requires the court to evaluate the evidence in "a light most favorable to the non-moving party", 142 N.J. at 536, and decide "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail..." *Id.* at 533.

Defendant Brian Harlins is not liable to plaintiff Mia Warren for attorney malpractice, and summary judgment should be granted in his favor. The legal elements for attorney malpractice in New Jersey are

> (1) the existence of an attorney-client relationship creating a duty of care…
> (2) the breach of that duty by the defendant, and
> (3) proximate causation of the damages claimed by the plaintiff.

McGrogan v. Till, 167 N.J. 414, 425 (N.J. 2001). Harlins is not liable because the parties' interaction did not establish an attorney-client relationship creating a duty of care and Harlins' conduct was not the proximate cause of the damages Warren claims.

I. SUMMARY JUDGMENT SHOULD BE GRANTED FOR HARLINS BECAUSE THE CASE DOES NOT ESTABLISH AN ATTORNEY-CLIENT RELATIONSHIP CREATING A DUTY OF CARE

Harlins and Warren's interaction did not create an express or implied attorney-client relationship. Without an attorney-client relationship, Harlins did not owe Warren a duty as a non-client because Harlins did not invite her reliance and could not have foreseen any reasonable reliance by Warren.

A. Harlins' informal and minimal interaction with Warren did not create an express or implied attorney-client relationship.

Harlins' informal and minimal interaction with Warren did not create an express or implied attorney-client relationship. Without contract, retainer or any form of privity, "an attorney is free to decline the representation." *Procanik by Procanik v. Cillo*, 226 N.J. Super. 132, 146 (App. Div. 1988). Offering "an affirmative refusal of a professional undertaking" means that there is "no attorney-client relationship" and that an attorney does not have "a duty subsequent to [the] 'sign-off' letter." *Id.* Warren and Harlins did not exchange any fee, they signed no contract; in fact, they did not even discuss a contract, representation, or administration

of legal services. Nevertheless, to make their situation absolutely clear, Harlins sent a letter officially declining to represent Warren; similar to *Procanik*, "this is a case about an affirmative refusal of a professional undertaking, not its acceptance." *Id.* Without a written contract and with a clear declination of representation, Harlins' informal and minimal interaction with Warren did not create an express or implied attorney-client relationship.

Harlins and Warren did not establish an implied attorney-client relationship because Harlins did not manifest consent to provide her legal services and he affirmatively declined representation. Without an express contract, an attorney-client relationship may be implied when

> (1) a person seeks advice or assistance from an attorney,
> (2) the advice or assistance sought pertains to matters within the attorney's professional competence, and
> (3) the attorney expressly or impliedly agrees to give or actually gives the desired advice or assistance.

Herbert v. Haytaian, 292 N.J. Super. 426, 436 (App. Div. 1996), quoting *Bays v. Theran*, 639 N.E.2d 720 (Mass. 1994). This test, meant to take the place of a written agreement, requires that the attorney "manifests consent to [provide legal services]" or, if the attorney "fails to manifest lack of consent to do so" but "knows or reasonably should know that the person reasonably relies on the lawyer to provide [legal services]." *Herbert*, 292 N.J. Super. at 437. If the attorney fails to state "then or promptly thereafter" that they will not represent the potential client, that attorney did not manifest their lack of consent. *Id*. Establishing an implied relationship, therefore, requires either a manifested consent to provide legal services or a failure to decline representation with the attorney's knowledge of the client's reasonable reliance on their legal services.

Compared to *Herbert*, where the attorney clearly manifested consent by undertaking an investigation, reviewing materials and requesting and receiving a signed confirmation of retention, *Id.* at 431-434, Harlins did nothing to manifest consent to provide legal services or

represent Warren. Harlins did not receive or investigate the relevant materials (e.g., Warren's termination letter), he declined payment, and he never requested or received any confirmation of representation. Harlins later expressed that he "didn't want to take her case and… thought [he] made that clear." *Harlins Deposition*, 8. Accordingly, Warren stated in her deposition that she did not expect Harlins to represent her in court and did not ask him to file anything on her behalf. *Warren Deposition*, 21. Harlins also promptly demonstrated his lack of consent by sending her a declination letter and recommending another attorney on June 27, 2019. Declining his representation less than two months after their conversation, Harlins left Warren with twenty-two months remaining on her claim's statute of limitations. Because Harlins did not consent to provide legal services and affirmatively declined representation, the parties never established an implied attorney-client relationship.

B. No non-client duty was created between the parties because Harlins did not invite or intend to induce Warren's reliance and could not have foreseen any reasonable reliance by Warren.

Harlins did not owe Warren a duty as a non-client because Harlins did not invite her reliance and no reasonable reliance could have been foreseen. An attorney owes a duty to a non-client when he "invites the non-client to rely on his opinion or provision of other legal services, [and] the non-client so relies and the non-client is not, under applicable law, too remote from the lawyer to be entitled to protection." *Petrillo v. Bachenberg*, 139 N.J. 472, 483 (1995). An invitation to rely, reasonably foreseeable reliance and legal proximity are the "linchpins" of this test. *Banco Popular N. Am. v. Gandi*, 184 N.J. 161, 181 (2005). Requiring an invitation to rely and reasonably foreseeable reliance serves "to cabin the lawyer's duty, so the resulting obligation is fair to both lawyers and the public." *Petrillo,* 139 N.J. at 484. To that end, the reasonableness

of the non-client's reliance is determined by "the extent to which [a non-client] foreseeably may rely on [the lawyer's services]." *Petrillo*, 139 N.J. at 485.

Requiring legal proximity by ensuring the attorney and non-client are not "too remote" serves to further limit liability to relationships that are "so close as to approach that of privity." *Id.* at 481. Although New Jersey courts have found a non-client duty in some cases, this has only been done when the attorney has a contractual relationship with a party in the transaction and does little to limit the client's reliance on their opinion. *See, e.g., Petrillo*, 139 N.J. 472 (finding a duty because the plaintiff was a prospective buyer in a transaction where defendant attorney was representing the other party); *Gandi*, 183 N.J. 161 (finding a duty because the plaintiff bank relied on a customer's attorney's opinion letter); *R.J. Longo Contr. Co. v. Schragger*, 218 N.J. Super. 206 (App. Div. 1987) (finding a duty because plaintiffs relied on documents from defendant as representative of party in privity with plaintiffs.) The legal involvement of these parties entitles the plaintiffs to protection because their connection "approach[ed] that of privity." *Petrillo*, 139 N.J. at 481.

Harlins did not invite Warren's reliance nor could he have reasonably foreseen her reliance. Reliance on Harlins' statements that "[w]e're not gonna let them get away with this", *Facebook Messages* at 10, and "the statute of limitations in NJ for most actions is 6 years", *Facebook Messages* at 11, is only reasonable if those two statements are viewed in isolation. When viewed in the context of the parties' entire interaction, including his letter declining representation and recommending that she seek another opinion, it is clear that Harlins was not inviting Warren's reliance, and any reliance on her part would be unreasonable.

Aside from those two comments, Harlins repeatedly insisted that Warren *should not* rely on him. Harlins confirmed in his deposition that he did not intend to invite reliance, saying,

"[e]mployment law isn't my area," and that Warren "shouldn't have" relied on his opinion. *Harlins Deposition* at 10. Affirming that intention, Harlins repeatedly told Warren that employment law was not his area of expertise, and Warren acknowledged that she knew "he wasn't an employment lawyer," (*Warren Deposition* at 20). Despite Harlins' statement that they would not "let them get away with this", *Facebook Messages* at 10, Warren herself admitted that she never expected Harlins to file a claim for her, or represent her in court. *Warren Deposition* at 21. She did not expect this because, it was clear, even to her, that he was not inviting her to rely on his opinion.

Even if Harlins' repeated disclaimers about his opinion on employment law were not sufficient, Warren could not reasonably rely on Harlins after the letter he sent her, declining representation and referring her to an employment firm. Harlins made abundantly clear that he would not be representing her, and that Warren should seek another opinion rather than rely on his. Furthermore, Harlins did not refer Warren at the eleventh hour; he did so with more than twenty-two months remaining on the statute of limitations. And Warren did meet with that other attorney, learning of the appropriate statute of limitations while her claim was still timely. After Harlins disclaimed his opinion, declined representation, and sent her to an employment expert with plenty of time to procure appropriate representation and file a claim, it would be unreasonable for Warren to continue to rely on Harlins' opinion.

Harlins did not stand in legal proximity to Warren's situation as compared to the circumstances in other New Jersey cases. Harlins was not legally involved in the transaction in a way that would entitle Warren to protection. He did not investigate the relevant materials, he was not representing a party in the transaction, and produced no documents on which any party in the transaction could rely. Simply, his relationship with Warren did not "approach that of privity."

Petrillo, 139 N.J. at 481. Harlins did not owe Warren a duty as a non-client because Harlins did not invite her reliance and no reasonable reliance could not have foreseen.

II. SUMMARY JUDGMENT SHOULD BE GRANTED FOR HARLINS BECAUSE HIS CONDUCT WAS NOT A SUBSTANTIAL FACTOR IN CAUSING WARREN'S LOST CLAIM AND THEREFORE WAS NOT A PROXIMATE CAUSE OF THE HARM.

Harlins' behavior was not a substantial factor in causing Warren's loss. Allowing the statute of limitations to expire was a product of Warren's own independent decisions. Harlins took sufficient steps to enable Warren to adequately assess the risk that the statute of limitations could expire. Summary judgment should be granted for Harlins because he was not the proximate cause of Warren's harm.

An attorney is liable when their "negligent conduct may be considered a substantial factor contributing to the loss." *Conklin v. Hannoch Weisman*, 145 N.J. 394, 419 (1996). This standard "does not require an unsevered connecting link between the negligent conduct and the ultimate harm." *Conklin,* 145 N.J. at 413. An attorney "in a counselling situation" may show that their conduct was not a substantial factor in the client's harm if they "advise[d] a client of the risks of the transaction in terms sufficiently clear to enable the client to assess the client's risks." *Id.* Alternately, an attorney is liable if he "fails to take the steps that competent counsel should take to protect a client from the risks that ultimately produce the injury." *Id.* at 418. In short, an attorney has done his job if he adequately protects the client from risk, and need not be an "insurer" or "guarantor of the soundness of his opinions…" *2175 Lemoine Ave. Corp. v. Finco, Inc.*, 272 N.J. Super. 478, 486 (App. Div. 1994), quoting *McCullough v. Sullivan*, 102 N.J.L. 381, 384 (1926). This practical standard ensures that an attorney can provide services without fear of being held accountable for all possible outcomes.

The court in *Conklin* acknowledged that there is "no causal connection between the fault and the harm" if "a client… deliberately violates the professional's instructions… or heedlessly [proceeds] regardless of any instructions on the part of the professional." 145 N.J. at 413. Though attorney malpractice does not acknowledge the concept of contributory negligence, the client's "conduct relates to causation" in that "an attorney has no obligation 'to lie down in front of a speeding train' to prevent a bad deal." *Id.* at 412-413. In short, an attorney is not responsible for the independent decisions of a client when that client "heedlessly" and "deliberately" defies the advice of the attorney. *Id.* at 413.

Harlins took steps to protect Warren from risk by qualifying his advice, declining representation with ample time for her to find appropriate representation and recommending an appropriate employment firm. In this case, the risk was that the statute of limitations could expire before Warren filed her employment claim. Harlins qualified his opinion, reminding Warren that he is not an expert and that "[e]mployment law isn't my area." *Harlins Deposition* at 10. Then, with twenty-two months remaining on the statute of limitations, Harlins sent a letter, declining representation and advising Warren to seek the opinion of an employment firm, Johnson & Leibovitz, to "discuss [her] case." *Ex. D-1 Harlins Ltr to Warren*. Harlins did not wait until the eleventh hour to disclaim his opinion and confirm that he was not representing Warren; he did so with abundant time for her to seek adequate representation, and recommended someone who could help. It was not necessary for Harlins to insure every potential outcome, only that he take the steps that competent counsel would take to protect Warren from the risk that the statute of limitations could expire. He did that by clarifying that he is not an employment lawyer and referring her to an expert who could help her with ample time for her avoid the risk that the statute of limitations could expire.

Warren, despite adequate counsel from Harlins that enabled her to assess the risk of her situation, heedlessly proceeded according to her own judgment. Harlins' legal advice was to seek the opinion of another attorney, and he accordingly recommended Johnson & Leibovitz. Implicit in the recommendation of another firm is that Warren listen to their opinion rather than continue to follow his advice. Taking his advice initially, Warren *did* speak with Kerrie Schulman from Johnson & Leibovitz to learn about her claim. Warren even received a letter from Schulman, confirming in writing that they had "discussed the two-year statute of limitations." *Ex. D-2 J&L Ltr to Warren*. Advised of the correct statute of limitations by Schulman, Warren disregarded this expert's opinion because Warren "didn't like her" and "[s]he seemed shady." *Warren Deposition*, 27. Harlins' advice was to seek and utilize the opinion of another attorney; Warren's decision to defy the advice of that expert attorney was her decision alone.

While Harlins' other advice was not legal in nature, Warren nevertheless disregarded even that friendly counsel based on her own carelessness. Harlins confirmed Warren's "instincts" and said she should wait until she found a job. *Facebook Messages* at 11. Without relying on or asserting any legal information or expertise, Harlins later testified that he felt it "made sense [for Warren] to concentrate on finding a job, since her financial situation seemed more urgent at the time..." *Harlins Deposition* at 9. Harlins' testimony indicates that legal expertise had no bearing on his input regarding when Warren should file her claim.

Nevertheless, Warren did find a job in August 2020, and she subsequently allowed an additional year to pass before her claim was filed. Warren's own testimony demonstrates that Harlins' conduct was not the cause, or even a factor, in her decision to wait. Allowing her claim to expire was an independent, thoughtless lapse: Warren testifies that after being furloughed, she had "a lot of personal stuff going on" and "the whole thing sort of fell out of my head for a little

bit." *Warren Deposition* at 24. Warren's decision to wait further was not based on Harlins' advice; she allowed her claim to "[fall] out of [her] head," only to be retrieved when it was too late. The expiration of her claim's statute of limitations was based on Warren's own, independent judgment, and had nothing to do with Harlins.

Though Warren would like to seek compensation for her expired claim, it was her own decisions that led to its expiration. Harlins must not be required "'to lie down in front of a speeding train' to prevent a bad deal." *Conklin,* 145 N.J. at 413. Harlins' behavior was not a substantial factor in Warren's lost claim because Harlins took sufficient steps to enable Warren to adequately assess the risk that the statute of limitations would expire and allowing it to expire was a product of Warren's independent, careless decisions.

CONCLUSION

Because the plaintiff fails to establish crucial elements of the New Jersey test for legal malpractice, summary judgment should be granted for defendant Brian Harlins. The case does not show an attorney client relationship creating a duty of care, nor that Brian Harlins' conduct was the proximate cause of her harm.

Consequently, defendant Brian Harlins respectfully requests that summary judgment be granted in his favor.

Signed, A Patrick DeSabato
Attorney for Defendant Brian Harlins
April 25, 2022

Applicant Details

First Name	**Hunter**
Last Name	**Dickerson**
Citizenship Status	**U. S. Citizen**
Email Address	**hwd4@duke.edu**
Address	**Address** Street **2530 Erwin Rd, Apt. 224** City **Durham** State/Territory **North Carolina** Zip **27705** Country **United States**
Contact Phone Number	**7025966370**

Applicant Education

BA/BS From	**Syracuse University**
Date of BA/BS	**June 2018**
JD/LLB From	**Duke University School of Law** **https://law.duke.edu/career/**
Date of JD/LLB	**May 5, 2023**
Class Rank	**School does not rank**
Does the law school have a Law Review/ Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Demidovich, Lisa
ldemidovich@bushgottlieb.com
818-973-3220
Bowling, Dan
Bowling@law.duke.edu
919-613-8547
Gordon, Anne
agordon@law.duke.edu
919-613-8563

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Hunter Dickerson
2530 Erwin Rd., Apt. 224
Durham, NC 27705

June 6, 2023

The Honorable Juan R. Sánchez
United States District Court
601 Market Street
Philadelphia, Pennsylvania 19106

Dear Judge Sánchez,

I am writing to apply for a clerkship for the 2024-2025 term. I graduated from Duke Law in May of 2023. I will be working at a law firm in Los Angeles until the 2024 term. It would be an honor to begin my professional career working and learning from you..

Both as a law student and as an undergraduate student, I have worked to develop my writing and researching skills. At Syracuse University, I wrote several research papers that won department-wide and university-wide awards. As a law student. I worked as a research assistant for three professors and co-wrote an article on legal history for Professor Dan Bowling that he plans to publish. My independent study and Duke's Advanced Legal Research course have also enhanced my research skills. I plan to improve my writing skills this summer by reading several legal writing books.

I have worked in fast-paced and demanding environments, including as a Summer Associate at Bush Gottlieb. In this position, I was part of a live negotiation team with a partner and several associates. We worked collaboratively to integrate our analysis of the economic statements and legal issues into an argument for the client. Through this experience, I gained experience working with a small group of people on a time sensitive legal matter.

Enclosed is my resume, Duke Law transcript, writing sample, and letters of recommendation from Professor Daniel Bowling, Ms. Lisa Demidovich, and Professor Anne Gordon. Please contact me if you need any additional information. Thank you for your consideration.

Sincerely,

Hunter Dickerson

HUNTER DICKERSON
2530 Erwin Road, Apt. 224, Durham, NC 27705 | hunter.dickerson@duke.edu | (702) 596-6370

EDUCATION

Duke University School of Law, Durham, NC
Juris Doctor expected, May 2023
GPA: 3.51
Activities: American Constitution Society, National Lawyers Guild, Healthcare Planning Project, Duke Graduate Student Union Law School Solidarity Committee, Fair Chance Project, Movement Lawyering Lab

Syracuse University, Syracuse, NY
Bachelor of Science in Political Science and Communications, *summa cum laude*, June 2018
GPA: 3.9
Awards: May Earle Prize for Outstanding Research Project (2018), Best Political Science Paper Award (2018), Best Academic Paper at SU London (2017), Best Sociology Paper Award (2017), White Denison Speech Competition Finalist (2016)
Internships: U.S. House of Representatives

LAW SCHOOL EXPERIENCE

Bush Gottlieb, Glendale, CA
Summer Associate, May 2022 – August 2022
Drafted positions statements and motions, prepared memos on a variety of legal issues, and attended arbitrations, negotiations, and hearings. Analyzed the ability of a hospital to afford a union contract.

Duke Law Health Justice Clinic, Durham, NC
Certified Law Student, January 2022 – April 2022
Drafted and executed estate planning documents for low income clients. Won a disability benefits case Petitioned for standby guardianship and conducted the hearing where the petition was granted.

American Federation of Teachers, Washington, D.C.
Research and Strategic Initiatives Intern, January 2022 – March 2022
Compiled and summarized AFT resolutions by issue area; researched lawsuits against public pension funds and detailed the allegations; communicated with members about union benefits and concerns.

Professors Daniel Bowling, Anne Gordon, and Michele Okoh, Durham, NC
Research Assistant, May 2021 – August 2021
Reviewed extensive legal scholarship, drafted literature reviews and annotated bibliographies, and formed arguments about the history of race and unions, environmental justice, and de-biasing law school clinics.

PRIOR EXPERIENCE

The Law Office of Roger A. Giuliani, Las Vegas, NV
Paralegal, August 2019 – March 2020
Managed client intake; drafted family court motions; drafted trusts, wills, and deeds for execution.

Black and LoBello, Las Vegas, NV
Paralegal, December 2018 – July 2019
Researched case law, reviewed discovery, and drafted pleadings for a small corporate and divorce firm.

Clark County District Attorney's Office, Las Vegas, NV
Legal Intern and Witness Advocate, March 2018 – August 2018
Prepared subpoenas, drafted discovery requests, and supported witnesses and victims during trial.

ADDITIONAL INFORMATION

Won best attorney at the National Mock Trial competition in high school. Won 'outstanding moot court attorney' at national high school competition. Graduated college in three years while working as a barista.

Hunter Dickerson

2530 Erwin Rd Apt. 224
Durham, NC 27705

(702) 596-6370
hunter.dickerson@duke.edu

6052 Cliff View Court
Las Vegas, Nevada 89135

UNOFFICIAL TRANSCRIPT
DUKE UNIVERSITY SCHOOL OF LAW

2020 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Civil Procedure	Sachs, S.	3.1	4.50
Contracts	Richman, B.	3.2	4.50
Torts	Coleman, D.	3.7	4.50
Legal Analysis, Research, Writing	Ragazzo, J.	*Credit Only*	0.00
Professional Development	Multiple	*Credit Only*	1.00

2021 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Constitutional Law	Young, E.	3.2	4.50
Criminal Law	Farahany, N.	3.1	4.50
International Law	Helfer, L.	3.3	3.00
Legal Analysis, Research, Writing	Ragazzo, J.	3.2	4.00

2021 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Property	Richman, B.	3.2	4.00
Adv Con Law: Civil Rights Mvmt	Lovelace, T.	3.5	3.00
Labor Relations Law	Bowling, D.	3.9	3.00
Ethics and the Law of Lawyering	Richardson, A.	3.4	2.00
Law and Governance in China	Qiao, S.	3.9	2.00

2022 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Administrative Law	Benjamin, S.	3.5	3.00
Employment Discrimination	Jones, T.	3.9	3.00

Survey of Immigration Law	Evans, K.	3.8	3.00
Health Justice Clinic	Rice, A.	3.6	5.00
Practitioner's Guide to Labor Law	Bowling, D.	4.0	1.00

2022 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Evidence	Beskind, D.	3.4	4.00
First Amendment	Benjamin, S.	3.8	3.00
Poverty Law	Greene, S.	3.8	3.00
Alternative Dispute Resolution	Thompson, C.	3.6	2.00
Independent Study: Labor History	Bowling, D.	4.3	2.00

2023 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Antitrust	Richman, B.	3.8	4.00
Business Associations	de Fontenay, E.	3.3	4.00
Ad Hoc Tutorial	Gray, K.	Credit	1.00
Movement Lawyering Lab	Gordon, A.	4.0	3.00
Advanced Legal Research	Zhang, A.	3.2	2.00

TOTAL CREDITS: 87.5
CUMULATIVE GPA: 3.51

BUSH GOTTLIEB

801 North Brand Boulevard, Suite 950
Glendale, California 91203
Telephone (818) 973-3200
Facsimile (818) 973-3201
www.bushgottlieb.com

April 28, 2023

99900-3220

Direct Dial: (818) 973-3220
ldemidovich@bushgottlieb.com

Re: Hunter Dickerson's Clerkship Reference

To Whom it May Concern:

I am writing to highly recommend Hunter Dickerson for a clerkship position. Hunter was a summer associate with our firm last summer, where he worked on a variety of assignments for public and private sector unions with matters in state and federal court, before administrative agencies, and being arbitrated before neutral labor arbitrators. Hunter worked on assignments in the firm's traditional labor, ERISA, and bankruptcy practice areas.

Hunter came to work every day with a great attitude, eager to take on whatever assignment was brought his way. Hunter is very smart and was accurate, thorough, and efficient with his time on all assignments. Our summer program is designed to be an accurate representation of what it is like to be an associate at Bush Gottlieb so we provide summer associates with real assignments, take them to client meetings and hearings, and invite them to all attorney meetings and gatherings. Because of this integration, we become well acquainted with our summer associates over the 10-week program. Hunter is a very affable person, and he worked well with everyone from partners to support staff and including his fellow summer associates. He also interacted well with clients, and appreciated the opportunity to meet with them even if the meeting occurred after regular business hours. Hunter will be an excellent addition to any chambers.

Hunter is an avid reader in his free time and intellectually curious. Hunter will do well with the court's challenging docket and wide range of subject areas.

I had the privilege of clerking for the Honorable Kim Wardlaw of the U.S. Court of Appeals for the Ninth Circuit. In my experience, the qualities that make someone successful in a clerkship are a willingness to tackle any assignment given, excellent research and writing skills, and an appreciation that there is a lot to learn from the judge and the more senior attorneys appearing before the court. Hunter possesses and exhibits all of those qualities, and you would be fortunate to have Hunter join your chambers next year.

Please feel free to reach out to me with any questions 818-973-3220.

Very truly yours,

Bush Gottlieb
A Law Corporation

Lisa C. Demidovich

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 15, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Hunter Dickerson

Dear Judge Sanchez:

I have had Hunter Dickerson in two of my courses, Labor Relations Law and Practitioner's Guide to Labor Law. In those classes he made the highest and second highest grades in the class. I have also supervised writing projects for Hunter and am currently working with Hunter on a labor history article. Quite simply, Hunter is one of the top students I have encountered in my 17 years at Duke Law.

Hunter is an active participant in everything he does. He provided valuable insights to classroom discussion without hogging the spotlight. Hunter has a passion for the law and a curious mind. Maybe as important, he is a positive and optimistic person.

As referenced above, Hunter worked for me as a research assistant in the summer of 2021. Hunter researched and drafted an article on the history of race and the labor movement. I gave Hunter the outline of what I wanted to research and what I wanted to say. Hunter turned in a well-cited 25-page article on the history of race and the labor movement with specific examples, statistics and empirical evidence, quotes, and a broader historical analysis. Hunter's draft of the article was a great starting point for our current research and writing project.

Most recently, I served as the faculty supervisor to Hunter's independent study, where he worked on a paper about labor conflict in early 20th century America. Hunter needs very little instruction because he grasps things quickly. This makes it easy to lay out the vision and goals to Hunter and then trust him to deliver a quality product. For example, I asked Hunter to write a brief history on the Pinkertons for use in a video lecture for a class he has already taken. Two days later, Hunter sent me a paper on the history of the Pinkerton Detective Agency and their role in four major strikes. Reliability and consistency are some of his strongest traits, in addition to his fine intellect.

As a practicing lawyer in addition to a professor for over 40 years I am confident that Hunter will be a great lawyer. I am pleased to provide my personal recommendation. If you have any other questions about Hunter, please feel free to contact me at (850) 377-1400 or bowling@law.duke.edu.

Sincerely yours,

Daniel S. Bowling III
Distinguished Fellow

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Hunter Dickerson

Dear Judge Sanchez:

My name is Anne Gordon and I am a Clinical Professor of Law at Duke Law School. I would like to strongly recommend my student, Hunter Dickerson, for a clerkship. Hunter and I have worked together since his 1L year, and I know him well enough to confidently say he would be a great addition to any judge's chambers – he is thoughtful, professional, easy to get along with, and a hard worker.

Hunter came to law school with the goal of pursuing labor work, and many of his courses have been geared toward pursuing that goal. He hopes to pursue a clerkship not only to get more exposure to this area of law, but to get an in-depth look at the federal administrative state and the many ways that other areas of law intersect with labor issues.

I first met Hunter when I hired him as a research assistant after his 1L year. Hunter was organized, self-directed, and thorough, always happy to do extra work to make his research more useful to me. He was always responsive to feedback, and patient when the work took unforeseen twists and turns. It is easy to picture him in a judge's chambers, working with co-clerks and going the extra mile to ensure that his judge was organized and well-informed.

Hunter then took my Movement Lawyering Lab class in the Spring of 2023, and he was a standout student, earning a 4.0. Hunter was not the loudest, or the most talkative student, but his comments were always thoughtful – he made a useful contribution to class whenever he spoke. His knowledge of history and philosophy in addition to modern jurisprudence made him my go-to for a "big picture" view of the topics discussed. He was also a creative thinker and strategist, always thinking of different ways to meet our partners' goals.

A good clerk must be confident in their research but willing to listen to others' viewpoints; they must know the law but be willing to think creatively. A good clerk must also have an even-tempered personality and be easy to work with. Hunter has all of these qualities, and more. I highly recommend him for a clerkship and would be happy to answer additional questions.

Sincerely yours,

Anne D. Gordon
Clinical Professor of Law
Director of Externships

Hunter Dickerson
2530 Erwin Road
Durham, NC 27705
(702) 596-6370
hunter.dickerson@duke.edu

Writing Sample

This is an unedited position statement I wrote as a summer associate at Bush Gottlieb. I have replaced the names of the charging party and the respondent with Charing Party and Respondent. I also removed my employer's information from the document. I have been given express permission to use it as a writing sample.

The position statement responds to a grievance filed by a union member. Respondent is a public sector union in California. Grievances against a public sector union are filed with the Public Employment Relations Board. The citation format of the position statement is in accordance with PERB's rules.

VIA E-FILING

Diana Suarez
Regional Attorney
Public Employment Relations Board
Los Angeles Regional Office
425 W Broadway, Suite 400
Glendale, CA 91204

Re: ***Charging Party v. Respondent,*** **Case No. LA-XX-XXXX-X**
Respondent's Position Statement

Dear Ms. Suarez:

Respondent submits this position statement urging dismissal of the above-referenced charge, which was filed by Charging Party on May 20, 2022. Charging Party appears to allege that Respondent breached its duty of fair representation ("DFR") under section 3544.9 of the Educational Employment Relations Act ("EERA"), and thereby violated section 3543.6(b). As explained below, PERB should dismiss the charge with prejudice for three reasons. First, PERB lacks jurisdiction over the charge's alleged conduct, which concerns a purely internal union dispute. Second, even if PERB is able to assert jurisdiction, the charge fails to state a *prima facie* case of a DFR breach by the Union because it does not allege any conduct rising to the level of being arbitrary, discriminatory, or in bad faith. Third, the charge does not allege facts establishing that the charge was timely filed.

I. The Challenged Conduct is Outside PERB's Jurisdiction

The scope of PERB's jurisdiction is limited to the interpretation and enforcement of collective bargaining legislation relevant to California public-sector employment. GOV'T CODE § 3541.3. PERB can only resolve claims of unfair practices, which are defined as conduct violating the collective bargaining statutes enforced by PERB. (*Los Angeles Unified School District* (1984) PERB Decision No. 448, dismissal ltr., p. 2.) PERB lacks jurisdiction to police internal union affairs. (*California State Employees Association* (1999) PERB Decision No. 1369-S, p. 3 [dismissing allegations that the union conducted elections outside the timeframe required by union bylaws because internal union affairs fall outside PERB jurisdiction]; *California State Employees Association* (1998) PERB Decision No. 1304-S, pp. 2-6 [noting that PERB has traditionally refrained from reviewing the internal affairs of unions].) As PERB declared in *California State Employees Association* (1999) PERB Decision No. 1368-S, at p. 28, "PERB's function is to interpret and administer the statutes which govern the employer-employee relationship, not to police internal relationships among various factions within employee organizations. . . . Internal union disputes are more appropriately presented in a different forum."

To bring internal union affairs within PERB's jurisdiction, a charging party must show that the internal union activities had a substantial impact on charging party's relationship with her employer. (*Service Employees International Union, Local 99 (Kimmett)* (1979) PERB Decision No. 106, p. 10.) PERB has stated, with respect to the duty of fair representation under EERA, that the statute "contains no language indicating that the Legislature intended that section to apply to internal union activities that do not have a substantial impact on the relationships of unit members to their employers." (*Id.*) If the charge does not allege the requisite impact on the employer-employee relationship, then the charging party fails to meet their threshold burden. (*California State Employees Association* (2000) PERB Decision No. 1411-S, p. 23.) The only situations where PERB will intervene in internal union affairs absent a substantial impact on the employer-employee relationship are when a union is alleged to have failed to establish or follow reasonable membership restrictions or disciplinary procedures impacting membership. (*San Jose/Evergreen Federation of Teachers* (2020) PERB Decision No. 2744, p. 18 n.8; *California School Employees Association and its Shasta College Chapter 381* (1983) PERB Decision No. 280, p. 11.) The Charge does not concern either situation.

Here, the Charge alleges conduct that is a part of Respondent's purely internal affairs. Internal union meetings about which school board candidate a union supports and how to organize support for that candidate are outside the scope of PERB's jurisdiction. While Charging Party gives a conclusory allegation, without any factual specificity, that a Respondent officer "tried to coerce and intimidate" her into voting for a certain candidate and did not adequately represent members "by being condescending," the Charge does not meet PERB's precedent for when it will intervene into internal union affairs. (*See California State Employees Association* (1998) PERB Decision No. 1304-S [holding that allegations of abuse and coercion of members did not involve conduct impacting the employment relationship and therefore dismissed the charges].) Furthermore, the Charging Party has not alleged any facts establishing that the officer's alleged conduct had any impact on the employer-employee relationship, nor does she allege that she was subjected to any internal union discipline. Nothing in the narrative of her charge suggests that the employer was involved in any way. Thus, the alleged conduct was entirely an internal union affair and Charging Party has not met her burden of showing an impact on the employer-employee relationship. Therefore, the Charge allegations fall outside PERB's jurisdiction and should be dismissed.

II. The Charge Fails to State a *Prima Facie* Case

A second, independent basis for dismissing the Charge is that it fails to state a *prima facie* case of a DFR breach. PERB Regulation 32615(a)(5) requires that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The charging party faces the burden of alleging with specificity the particular facts giving rise to

a violation. (*City of Roseville* (2016) PERB Decision No. 22505-M, pp. 12-13.) The charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, warning ltr., p. 2 [citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944].) Mere legal conclusions are not sufficient to state a prima facie case. (*Id.*). A Board agent should issue a complaint only when it can be determined that "the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations." (*Eastside Union School District* (1984) PERB Decision No. 466, p. 6.)

In order to state a *prima facie* DFR violation, Charging Party must show that the conduct of an exclusive representative was arbitrary, discriminatory, or in bad faith. (*Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124, pp. 6-8.) PERB has stated that it is the charging party's burden to show how a union violated its duty of fair representation; it is not the union's burden to show that it properly exercised its discretion. (*United Teachers - Los Angeles (Wyler)* (1993) PERB Decision No. 970, warning ltr., pp. 4-5.) That burden requires the Charging Party to, "at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment." (*United Teachers of Los Angeles (Strygin)* (2010) PERB Decision No. 2149, warning ltr., p. 4 [quoting *Reed District Teachers Association, CTA/NEA* (1983) PERB Decision No. 332, p. 9].) A DFR breach will not be found where the exclusive representative is guilty of "mere negligence or poor judgment." (*Service Employees International Union (Scates) (Pitts)* (1983) PERB Decision No. 341, Order, pp. 910.) An exclusive representative is not expected, nor required, to satisfy all members of the unit it represents. (*California School Employees Association (Chacon)* (1995) PERB Decision No. 1108, warning ltr., p. 3.)

Here, Charging Party fails to meet its burden of establishing a *prima facie* case of a breach of Respondent's DFR. The Charge statement includes conclusions, rather than descriptive facts, about the alleged conduct. The Charge does not state when and where the incident took place, what the meeting was for, who was invited to the meeting, what is meant by "coerce and intimidate" or how it was effectuated, or who was asked to leave the meeting and why. It also does not include a statement of the remedy sought. Nowhere is there a link to Charging Party's employment relationship, or a remedy related to her employment. Charging Party states conclusions of law, but does not allege sufficient facts to support those conclusions. Further, the limited statement that is given does not indicate a DFR violation. While it seems that Charging Party was insulted by the disagreement she had at the meeting, this does not violate the DFR. The allegations do not explain how the union acted arbitrarily, discriminatorily, or in bad faith.

Thus, the Charging Party has not satisfied her burden to establish a *prima facie* DFR violation, and the Charge should be dismissed for this reason as well.

III. The Charge Does Not Allege Sufficient Facts to Determine Timeliness

It is the Charging Party's burden to show that her charge is timely. In order for a complaint to issue, the charging party must allege facts proving that the unfair practice charge was filed within the statute of limitations period. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072, 1086-91; *Los Angeles Unified School District* (2007) PERB Decision No. 1929, p. 6; *City of Santa Barbara* (2004) PERB Decision No.1628-M, warning ltr., p. 2.) Both EERA itself and PERB Regulation 32615(a) require the charging party to allege the date that the unfair practice occurred. (*San Francisco Unified School District* (1985) PERB Decision No. 501, pp. 5-6; *see also Long Beach Council of Employees* (2009) PERB Decision No. 2002, pp. 6-7, 10-11.)

Here, the Charging Party does not meet her burden. There is no reference in the Charge to when the alleged unfair practice occurred. Without these allegations, the Board cannot determine whether the charge is timely and, therefore cannot issue a complaint.[1]

Conclusion

As the foregoing discussion shows, the Charge is subject to dismissal because (1) the allegations concern a purely internal union dispute over which PERB lacks jurisdiction; (2) the allegations do not state a *prima facie* case of a DFR breach; and (3) the allegations do not establish that the charge was timely filed. Additionally, because Respondent's conduct alleged in the charge was not of a kind to give rise to a DFR breach, any opportunity to amend of the Charge would be futile as it would remain outside of PERB's jurisdiction, and the charge should be dismissed with prejudice.

Verification

This response is true and complete to the best my knowledge and belief and is signed under penalty of perjury.

Respectfully,

[1] Even if Charging Party could amend her charge to allege facts establishing timeliness, amendment should not be allowed, because the charge clearly focuses on an internal union dispute over which PERB has no jurisdiction, and on union conduct which does not meet the standard to violate the duty of fair representation.

821216v2

Applicant Details

First Name	**Christopher**
Last Name	**Dietz**
Citizenship Status	**U. S. Citizen**
Email Address	**cdietz@jd24.law.harvard.edu**
Address	**Address** **Street** **4 Oak Terrace, Apt. 401** **City** **Somerville** **State/Territory** **Massachusetts** **Zip** **02143** **Country** **United States**
Contact Phone Number	**4153128821**

Applicant Education

BA/BS From	**Vassar College**
Date of BA/BS	**May 2017**
JD/LLB From	**Harvard Law School** **https://hls.harvard.edu/dept/ocs/**
Date of JD/LLB	**May 23, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Harvard Civil Rights–Civil Liberties Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Barksdale, Russell
barksdalerussell77@gmail.com
(504) 908-2415

Crespo, Andrew
acrespo@law.harvard.edu
617-495-3168

Natapoff, Alexandra
anatapoff@law.harvard.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

CHRISTOPHER DIETZ

4 Oak Terrace #401, Somerville, MA 02143 | 415.312.8821 | cdietz@jd24.law.harvard.edu

June 12, 2023

The Honorable Juan R. Sanchez
United States District Court for the Eastern District of Pennsylvania
601 Market Street, Room 14613
Philadelphia, PA 19106

Dear Judge Sanchez:

I am writing to express my strong interest in a clerkship in your chambers starting in 2024 or 2025. I am a rising third-year student at Harvard Law School who is dedicated to a public interest career as an appellate criminal defense attorney. I am particularly interested in clerking in your chambers because it presents the opportunity to work with a highly experienced former public defender.

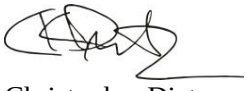
Attached please find my resume, law school transcript, and writing sample. The following people are submitting letters of recommendation separately and welcome inquiries in the meantime:

- Prof. Andrew Crespo, Harvard Law School, acrespo@law.harvard.edu, (617) 495-3168
- Prof. Alexandra Natapoff, Harvard Law School, anatapoff@law.harvard.edu, (617) 998-0845
- Russell Barksdale, Louisiana Capital Assistance Center, barksdalerussell77@gmail.com, (504) 908-2415

I would bring strong legal research skills and extensive writing experience with me to a clerkship. As a summer intern for the Louisiana Capital Assistance Center, I helped to prepare interlocutory appeals to Louisiana's appellate and supreme courts. In my 2L year, I interned for the Appeals Unit of the Massachusetts state public defender. My assignments included a 50-state survey of firearm statutes from the colonial period to the 19th century, an in-depth comparison of a federal statute with its state counterpart through Supreme Court, federal, and state precedents, and the application of the *Padilla* doctrine to a novel ineffective assistance of counsel claim. I subsequently completed a research paper on this third topic under the supervision of Professor Natapoff. Also in my 2L year, I was a clinical student at the Institute to End Mass Incarceration under Professors Crespo and Dharia, where I researched administrative law topics such as the law of congressional appropriations and litigation under federal compliance statutes. Additionally, over the past two years, as a Technical Editor and Subciter for the *Harvard Civil Rights – Civil Liberties Law Review*, I have been responsible for editing hundreds of pages of text.

I would be honored to contribute to the important work of your chambers. Thank you very much for your time and consideration.

Sincerely,



Christopher Dietz

Enclosures: Resume, Harvard Law School Transcript, Writing Sample.

CHRISTOPHER DIETZ

4 Oak Terrace #401, Somerville, MA 02143 | 415.312.8821 | cdietz@jd24.law.harvard.edu

EDUCATION

Harvard Law School, J.D. Candidate, May 2024
Activities: *Harvard Civil Rights – Civil Liberties Law Review*, Technical Editor
Professor Daniel Medwed, Research Assistant (Incoming 2023-2024)
Harvard Defenders, Student Attorney
Harvard Prison Legal Assistance Project, Student Attorney
Trial Advocacy Workshop (Winter 2023, Professor Ron Sullivan)
Criminal Justice Clinic (Incoming 2023-2024, Professor Dehlia Umunna)

Vassar College, B.A. in Political Science, May 2017
Activities: Vassar Prison Initiative
Professor Luke Harris, Research Assistant (American Politics, Critical Race Theory)
Thesis: *The Indigent and the Dangerous: Against the Legitimation of Preventive Detention in Contemporary Bail Reform* (Ida Frank Guttman Prize for Best Political Science Thesis)

EXPERIENCE

Brooklyn Defender Services | *Law Clerk, Criminal Defense Practice* | Brooklyn, NY Summer 2023
Assist trial attorneys in representation of clients in Brooklyn Criminal and Supreme Courts.

Institute to End Mass Incarceration | *Clinical Student* | Cambridge, MA Spring 2023
Assisted Professors Andrew Crespo and Premal Dharia in researching mechanics and litigation related to the congressional appropriations process (rescission, impoundment, transfer and reprogramming) and statutes governing federal projects (e.g. NEPA, Clean Water Act) in order to support efforts to block the construction of a federal prison.

Committee for Public Counsel Services | *Law Clerk, Appeals Unit* | Boston, MA Fall 2022
Completed legal research and writing assignments for Appeals Unit attorneys in felony and misdemeanor cases. Research topics included: penalties in firearm statutes from the colonial period to late 19th century; application of collateral consequence IAC doctrine to civil commitment; and comparison of the federal and Massachusetts ACCA. Participated in moots in preparation for oral arguments in the Massachusetts Supreme Judicial Court and Appeals Court.

Louisiana Capital Assistance Center | *Law Clerk* | New Orleans, LA Summer 2022
Supported trial-level representation of 5 clients facing the death penalty in Louisiana. Conducted legal research, including an in-depth memo on circumstances that render search warrants deficient. Drafted and edited pretrial motions, including motions to bar evidence and argument of future dangerousness, motions to exclude gruesome photos, and motions for missing discovery. Drafted and edited extraordinary writ petitions to the Louisiana Circuit Court of Appeals and Louisiana Supreme Court.

Innocence Project | *Paralegal, Post-Conviction Litigation* | New York, NY 2018 – 2021
Supported attorneys in post-conviction DNA litigation for an ongoing docket of 41-57 clients covering 14 states. Drafted letters in support of clients' parole and clemency. Wrote memoranda on discrete factual issues, including: discrepancies between police accounts of arrest/shooting and client testimony; chain of custody; and forensic testing results. Created digests of trial transcripts. Drafted record and evidence search requests. Coordinated evidence transmission with forensics labs.

Sanford Heisler Sharp, LLP | *Legal Assistant* | New York, NY 2017 – 2018
Supported attorneys in employment discrimination, wage theft, and whistleblower cases. Served as the lead legal assistant on a gender discrimination case against a Big Law firm as well as a pre-suit, multi-client gender discrimination case against a large bank. Assisted in the settlement of two major class action lawsuits for $2.5 and $4 million.

San Francisco Public Defender's Office | *Undergraduate Intern, Bail Unit* | San Francisco, CA Summers 2015 & 2016
Drafted 2-3 bail motions per week. Interviewed clients in county jails to craft statements for motions. Communicated with clients' family, friends, and service providers to supplement bail motions with additional information, coordinate attendance of clients' hearings, and ensure access to continued support upon clients' release.

ADDITIONAL SKILLS AND EXPERIENCE

Spanish (proficient). Working knowledge of various forensic techniques, including DNA testing.

Harvard Law School

Date of Issue: June 8, 2023
Not valid unless signed and sealed
Page 1 / 2

Record of: Christopher Kalimos Dietz
Current Program Status: JD Candidate
Pro Bono Requirement Complete

JD Program

Fall 2021 Term: September 01 - December 03

1000	Civil Procedure 1 Rubenstein, William	P	4
1001	Contracts 1 Okediji, Ruth	P	4
1006	First Year Legal Research and Writing 1A Francis, Daniel	H	2
1003	Legislation and Regulation 1 Tarullo, Daniel	P	4
1004	Property 1 Mann, Bruce	H	4

Fall 2021 Total Credits: 18

Winter 2022 Term: January 04 - January 21

1052	Lawyering for Justice in the United States Gregory, Michael	CR	2

Winter 2022 Total Credits: 2

Spring 2022 Term: February 01 - May 13

2011	Art of Social Change Gregory, Michael	H	2
1024	Constitutional Law 1 Eidelson, Benjamin	P	4
1002	Criminal Law 1 Yang, Crystal	H	4
1006	First Year Legal Research and Writing 1A Francis, Daniel	H	2
1005	Torts 1 Gersen, Jacob * Dean's Scholar Prize	H*	4

Spring 2022 Total Credits: 16
Total 2021-2022 Credits: 36

Fall 2022 Term: September 01 - December 31

2050	Criminal Procedure: Investigations Crespo, Andrew	H	4
8099	Independent Clinical - Committee for Public Counsel Services, Appeals Unit Natapoff, Alexandra	CR	3
2142	Labor Law Sachs, Benjamin	H	4
2761	Misdemeanor Justice Natapoff, Alexandra	CR	1

Fall 2022 Total Credits: 12

Winter 2023 Term: January 01 - January 31

2249	Trial Advocacy Workshop Sullivan, Ronald	CR	3

Winter 2023 Total Credits: 3

Spring 2023 Term: February 01 - May 31

2079	Evidence Clary, Richard	P	3
8051	Institute to End Mass Incarceration Clinic Crespo, Andrew	H	4
3003	Institute to End Mass Incarceration Clinical Seminar Crespo, Andrew	H	2
2165	Legal History: Continental Legal History Donahue, Charles	P	3

Spring 2023 Total Credits: 12
Total 2022-2023 Credits: 27

Fall 2023 Term: August 30 - December 15

2086	Federal Courts and the Federal System Goldsmith, Jack	~	5
3119	Poverty Law Workshop: Leveraging the Safety Net to Address Homelessness & Advance Equity McCormack, Julie	~	2

Fall 2023 Total Credits: 7

Fall 2023 - Winter 2024 Term: August 30 - January 19

8002	Criminal Justice Institute: Criminal Defense Clinic Umunna, Dehlia	~	5
2261	Criminal Justice Institute: Defense Theory and Practice Umunna, Dehlia	~	4

Fall 2023 - Winter 2024 Total Credits: 9

Spring 2024 Term: January 22 - May 10

2000	Administrative Law Block, Sharon	~	4

continued on next page

Harvard Law School

Record of: Christopher Kalimos Dietz

Date of Issue: June 8, 2023
Not valid unless signed and sealed

2169	Legal Profession: Understanding the Plaintiff's Attorney Rubenstein, William	~	3
		Spring 2024 Total Credits:	7
		Total 2023-2024 Credits:	23
		Total JD Program Credits:	86

End of official record

HARVARD LAW SCHOOL
Office of the Registrar
1585 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

~~~~~~

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

~~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
May 2011 - Present

Summa cum laude	To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class
Magna cum laude	Next 10% of the total class following *summa* recipient(s)
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67(B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

1969 to June 1998	General Average
Summa cum laude	7.20 and above
Magna cum laude	5.80 to 7.199
Cum laude	4.85 to 5.799

June 1999 to May 2010
Summa cum laude General Average of 7.20 and above (exception: *summa cum laude* for Class of 2010 awarded to top 1% of class)

Magna cum laude	Next 10% of the total class following *summa* recipients
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

Prior Degrees and Certificates
LL.B. (Bachelor of Laws) awarded prior to 1969.
The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

June 11, 2023

To Whom It May Concern:

I had the immense pleasure of working with Mr. Chris Dietz during the summer of 2022. Chris is brilliant and assiduous. Many interns fall into the habit of being simple taskmasters. However, Chris was a rare combination: a self-starter who deeply understood the needs of our clients and legal team. During my three years of supervising interns at the Louisiana Capital Assistance Center (LCAC), where I was employed until this month, and seven years at the Orleans Public Defenders, the public defense firm of New Orleans, Chris is likely the all-around best intern I have ever supervised.

LCAC is a non-profit organization that provides representation to indigent capital defendants, principally at the trial level, in Louisiana and other southern states. LCAC also pursues systemic litigation related to issues such as racism in the criminal justice system and lack of funding for adequate representation. Its work is both high volume and high stakes, yet it is limited by resources to a small permanent staff. As a result, LCAC asks and expects a great deal of interns and volunteers. Chris worked as a full-time summer legal intern at the LCAC from May 31 to August 5, 2022. The office benefited tremendously from his work ethic and commitment to our clients.

Chris worked on four different cases while interning at LCAC. Two of them were capital. Two were formerly capital cases where the clients faced very serious charges. The stress of representing clients in such dire predicaments never seemed to phase Chris. He quickly formed relationships with clients. He visited with them often, updated them on their cases, and communicated with them about their needs. His work ranged widely, from helping prepare writs (Louisiana's term for interlocutory appeals) covering complex issues that mixed state and federal law to helping a client get prescription eyeglasses.

Chris consistently went beyond what was asked of him in everyday tasks. For example, when assigned the simple task of changing the headers on a large stack of motions, Chris recognized that the citations were out of date and updated all the relevant cites in the entire stack. He was even able to replace some of the overruled caselaw with cases that could stand for the same proposition.

Chris is a phenomenal researcher and writer. He was consistently successful in finding pertinent cases and is meticulous with his Bluebook citations. Most impressively, although Chris had only finished one year of law school and had not yet taken criminal procedure when he interned with me, he wrote a very thorough and precise memorandum of law for a case that involved over twenty searches and search warrants. The issues ranged from jurisdiction, to standing, to the open-fields doctrine, to the nexus requirement. The broad range of issues and types of searches made creating a memo very difficult. However, Chris was able to find and process relevant cases and sources into a memorandum that greatly assisted me with preparing for oral argument and successive litigation. His final memorandum was over twenty-five pages long, but it was very well organized and easy to wield.

In a different example of Chris's strengths, he assisted me in performing an all-day review in another parish for a capital case where we photographed and catalogued hundreds of items of evidence. Prior to the review, he checked through all the voluminous evidence in order to prepare a list of all the evidence we believed was missing. During the review, he was our point person in highlighting the pieces of evidence we had never seen. After the review, he stayed up late at night, again cataloguing the evidence we still believed we were missing in order to prepare for a motion hearing the next morning.

Chris was also responsive and eager to assist. With less than a day's notice, the day after a federal holiday, he volunteered to assist with the filing of approximately fifty motions that were due that day. He showed up at 5 a.m. at the office that morning to help with the printing in order to ensure the paper motions—in total over a thousand pages of exhibits and service copies—were ready in time. He then drove the motions, by himself, six hours across the state. Once at the courthouse, filing the motions required coordinating with the judge and clerk of court, which he did with class. As always, he never complained.

I enjoyed working with Chris last summer. He required almost no supervision and always stayed on task. I think he can easily merge into any office and do hard work with a smile on his face.

Sincerely,

Russell Barksdale

Russell Barksdale
LCAC Staff Attorney 2019–2023
430 South Saint Patrick Street
New Orleans, LA 70119
Barksdalerussell77@gmail.com
(504) 908-2415

HARVARD LAW SCHOOL

CAMBRIDGE · MASSACHUSETTS · 02138

ANDREW MANUEL CRESPO

Morris Wasserstein Public Interest Professor of Law 617.495.3168
Founder and Executive Faculty Director, Institute to End Mass Incarceration acrespo@law.harvard.edu

June 8, 2023

The Honorable Gabriel P. Sanchez
United States Court of Appeals for the Ninth Circuit
James R. Browning United States Courthouse
95 Seventh Street, Room 205
San Francisco, CA 94103-1518

Dear Judge Sanchez,

It is my pleasure to write to you in enthusiastic support of Chris Dietz's application to serve as a law clerk in your chambers. I know Chris exceptionally well, having taught and worked with him in two related but distinct settings over the course of the past academic year: He was a student in my upper-level Criminal Procedure course and was also one of the eight students whom I admitted to the clinic that I direct at Harvard Law School as a component of the Institute to End Mass Incarceration. The first of these settings is a traditional law school academic course, in which Chris showcased his impressive talents as a doctrinal analyst. Based in part on that performance, I admitted him into the clinic, where I gained a unique insight into what it is like to work closely with him on an extended and challenging project in which research and writing skills were at the highest premium. Having gotten to know Chris so well in that special setting, I feel confident predicting that he will be a terrific clerk. I recommend him to you with enthusiasm.

I first came to know Chris when he was a student in my Criminal Procedure Investigations class during his 2L year. The course is one of our school's larger classes, with one hundred and thirty-five upper-level students enrolled, many of whom serve on the *Law Review* and go on to graduate *magna cum laude.* In that impressive setting, Chris stood out as an excellent student. In each of our many interactions in class, he showed himself to be sharp, careful, and thoughtful. His responses to questions demonstrated an attentiveness to all of the essential details of the case. At the same time, he was adept at situating his analysis within a larger doctrinal and historical context—he can see the forest and the trees. Having spent three years as a law clerk myself, I remember how often I would sit down to talk through hard cases with each of my judges and justices, and how essential those conversations were not just in framing the eventual opinion, but in sorting

out how best to approach and decide the case itself. I think Chris will be a real asset to you in those conversations.

Given Chris's strong performance throughout the semester, I was not surprised in the least to see Chris turn in an exam that easily earned Honors marks. And that is par for the course. After an initially mixed first semester (two Hs, three Ps), Chris has had an impressive trajectory, earning an unbroken string of Hs over the following semesters, with a Dean's Scholar Prize from my colleague Professor Gersen (by reputation a demanding grader) as icing on top. Having spent many years as a member of our clerkship committee, I can tell you with confidence that Chris's grades not only capture well his talent but also make him a very competitive applicant. His ability to rebound from his first semester to produce such an impressive string of top marks is a testament as well to his resilience and strength of character.

Based largely on his performance in class, I selected Chris the following semester to be one of only eight students in a clinic that I direct at Harvard Law School as a component of the Institute to End Mass Incarceration. The clinic is designed to immerse students in the design and execution of a high-impact strategic litigation campaign undertaken in coordination with a coalition of organizers. Our role in the coalition is to map out innovative legal strategies that could help to advance the coalition's organizing and campaign goals across various dimensions—from courtroom success, to narrative framing, to mobilizing organizing efforts. The students were required to demonstrate creative and strategic thinking, to work collaboratively on team-based projects, and to throw themselves into a semester-long writing project that included multiple rounds of drafting and intensive revision under the direct supervision of me and my co-instructor, the Institute's Executive Director, Prema Dharia.

We selected the eight enrolled students out of dozens of impressive applicants. Together, we operated as a full-time law office to develop a comprehensive and detailed set of legal strategy memos that offered roadmaps for different ways in which law might be leveraged in service of the coalition's goal of halting construction of a new prison in central Appalachia. The substantive areas of law canvassed by the students were wide-ranging, covering fields such as property law, eminent domain, administrative law, environmental law, and federal appropriations law. The clinic is leanly staffed—just two instructors and the students, with the instructors serving as supervising attorneys and the students serving as the lawyers on the project under our direct supervision. To make room for this project, I clear out all of my other teaching and writing responsibilities for the semester and work with the students full time on our campaign.

As you might imagine, working with students in such an intensive way over the course of a semester gave me a unique insight into their personalities, aptitudes, and strengths.

In fact, as I told the students multiple times, the relationships developed between students and supervisors in our shared work felt very much like the relationships that I had previously developed with the judges and Justices I clerked for during my three years as a law clerk. The time I spent working with Chris in that special setting confirmed my sense that he is already a talented and nuanced legal thinker, and that he will be an excellent clerk. He is diligent, precise, professional, methodical, analytical, creative, and wise.

Beyond all of that, he is also a terrific person. In the clinic, he was a generous and thoughtful team player who became more a colleague than a student by the end of our time together. He carries himself with a quiet confidence, a disarming sense of humor, and is gracious and generous with every member of the team. As for his strength of character, Chris has impressed me with his evident commitment to serving the public interest, and to criminal justice work in particular. That commitment comes through in his words and in his deeds, as he speaks passionately about the ends to which he intends to devote his considerable talents as a lawyer. Already, he has set himself out along that path, in both clinical work and in his time before and during law school working at a string of impressive offices, from the Innocence Project, to the Brooklyn Defender Service, to the Louisiana Capital Assistance Project, to our own public defender here in Boston.

A student with a track record of landing so many impressive positions clearly has something special going for him—and in Chris's case, I can confirm that I've seen it firsthand. It is my pleasure to recommend him to you. I hope you will not hesitate to contact me if you have any questions about his candidacy.

Sincerely,

Andrew Manuel Crespo

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is a pleasure to write this letter of recommendation for Christopher Dietz. Chris was a student in my small reading group this year, and I also supervised his clinical externship research paper, so I have had the opportunity to get to know his work quite well. Chris is a strong and careful writer, an engaged thinker, and deeply committed to public service. Not only does he work very hard, he knows how to learn and grow from his experiences. He will make an excellent clerk.

In Fall 2022, Chris was a student in my reading group titled “Misdemeanor Justice.” The class was small, only thirteen students, and involved intensive reading assignments regarding all aspects of the criminal misdemeanor system, followed by in-class discussion of the material. Chris was a central participant in this tightknit group: always prepared, thoughtful, and in conversation with other members of the class. His deep interest in the subject matter shone through every time, and I could always count on him to advance the discussion in a nuanced way.

This class was pass-fail but if it had been graded, Chris would have received a top grade. This is consistent with the rest of his transcript which demonstrates his generally strong mastery from the outset of law school, and increasing proficiency over time. I would expect Chris to do very well in his third year.

That same fall, I also supervised Chris in his clinical externship at the Committee for Public Counsel Services (CPCS) Appeals Unit where he wrote a substantial research paper. Students have a choice for their writing requirement when they do a clinical externship, and Chris chose the more onerous option of writing a substantive research paper titled “Incarceration Without Notice: Arguing for the Extension of Padilla to the Civil Commitment Context.” He was inspired by the experiences of one of his appellate clients who was not advised by his attorney that he could be involuntarily committed and lose his right to carry a firearm pursuant to a civil commitment hearing. Chris argued in his paper that such consequences of involuntary commitment should be treated like deportation under Padilla v. Kentucky, and that failure to advise should therefore be deemed ineffective assistance of counsel.

The issue was a complicated one. It required Chris to master the details both of Massachusetts law, which distinguishes between direct and collateral consequences, and extensive post-Padilla Sixth Amendment case law. He needed to master quite a bit of doctrine that he had not formally studied, and figure out how to organize and present it clearly. He also needed to delve into the law review literature to see how scholars had handled similar issues.

As a 2L, Chris did not have extensive experience writing law school research papers, so he needed to learn this new skill. We spent quite a bit of time discussing not only the substantive issues but how he might think in a more scholarly and discursive way about the dilemmas presented by his client’s case.

Chris learned quickly and his drafts improved dramatically. He figured out how to move nicely between larger theoretical arguments and more concrete doctrinal applications. His work over the semester reflected steady progress and increased depth. The ultimate product was clear, thoughtful, rigorous, and interesting—quite a feat for a second-year student in the middle of a challenging clinical externship. Overall I was impressed with Chris’s engagement with and execution of an ambitious project.

Over the course of the semester I had the chance to talk to Chris quite a bit about his plans and aspirations. He is deeply committed to public service and, as you can see from his résumé, he has worked hard to build out his experiences in the public defense space. He seems to get real satisfaction from representing his clients with zeal, and from the opportunities that lie before him to do more such work. My impression is that he is sincere and idealistic even as he is realistic about the challenges of working in public defense.

Finally, Chris has an easygoing and slightly low key demeanor. He is intellectually serious and rigorous, but unlike some of his classmates he does not insist on demonstrating his strengths in public or at the expense of others. Rather, his strengths show up in his work ethic and his work product. This made him a pleasure to have in class and will make him a positive member of any chambers that he clerks in.

In sum, Chris is a strong student, a clear and careful writer, a committed member of the legal community, and well on his way to becoming an excellent attorney. I am confident that he will be an excellent clerk.

Please let me know if I can provide any additional information.

Sincerely,

Alexandra Natapoff
Lee S. Kreindler Professor of Law

Alexandra Natapoff - anatapoff@law.harvard.edu

To: Russell Barksdale
From: Chris Dietz
Date: July 27, 2022
RE: Supporting caselaw for claims about deficiency of search warrants

This memo reviews and compiles supporting caselaw to supplement claims from our Motion to Suppress Seized Evidence about the deficiency of 19 search warrants obtained in **[our client's**] case. In our motion, we refer to four prima facie flaws of the challenged warrants: (1) the warrant is far too broad, (2) the warrant lacks a nexus between the crime and the broad material requested, (3) the warrant relies on an application/affidavit with conclusory statements rather than facts that can be evaluated, and (4) the subject of the search warrant is not within the jurisdiction of the court issuing the warrant. Each category of challenge will be discussed after a brief overview of the foundational principles governing search warrants.

A. Foundational Principles Governing Search Warrants

The United States Constitution protects persons from unreasonable search and seizure of their "houses, papers, and effects[.]" U.S. Const. amend. IV. With some exceptions, all searches or seizures must be executed pursuant to a warrant, and that warrant must be issued "upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." U.S. Const. amend. IV. The Louisiana Constitution contains nearly identical language, with the addition that the warrant must describe "the lawful purpose or reason for the search." *See* La. Const. art. 1 § 5. The Louisiana Code of Criminal Procedure similarly provides: "A search warrant may issue only upon probable cause established to the satisfaction of the judge, by the affidavit of a credible person, reciting facts establishing the cause for issuance of the warrant." La. C.Cr.P., art. 162.

The evidence and facts in support of a warrant (either in the warrant application's language or in the affidavit attached by the officer) must lead to two conclusions: (1) probable cause exists to believe the described items and/or area to be searched are connected with the alleged criminal activity (*Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 307 (1967)), and (2) probable cause exists to believe the items sought will be found in the place to be searched (*State v. Mena*, 399 So. 2d 149, 152 (La. 1981)). At a basic level, the magistrate or judicial officer reviewing the warrant "must be supplied with enough information to support an independent judgment that probable cause exists for the issuance of a warrant." *State v. Morstein*, 404 So. 2d 916, 919 (La. 1981) (summarizing a holding of *Whiteley v. Warden*, 401 U.S. 560 (1971)).

In general, courts will not read warrants and the accompanying affidavits in overly exacting ways—"[a]ffidavits supporting the issuance of search warrants must be read in a common sense manner." *State v. Guidry*, 388 So. 2d 797, 800 (La. 1980), citing *United States v. Harris*, 403 U.S. 573 (1971). The Supreme Court has stated:

> [T]he Fourth Amendment's commands, like all constitutional requirements, are practical and not abstract. If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting.

United States v. Ventresca, 380 U.S. 102, 108 (1965).

In keeping with this permissive attitude, defective descriptions in warrant applications can be saved by adequate description in the affidavit so long as the warrant specifically incorporates the affidavit and the affidavit accompanies the warrant. *Groh v. Ramirez*, 540 U.S.

551 (2004) (holding "obviously deficient" warrant unconstitutional when it failed to incorporate by reference the detailed supporting affidavit/application that would have otherwise made it sufficient). Where a warrant contains general or even misleading descriptions that might subject them to the challenges discussed below, courts may still find that information in the affidavit sufficiently clarifies the warrant. *State v. Smith*, 397 So. 2d 1326, 1328 (La. 1981) (referring to *State v. Hysell*, 364 So. 2d 1300 (La. 1978) and *State v. Cobbs*, 350 So. 2d 168 (La. 1977)).

B. Broadness and Particularity

In our motion, we challenge the warrants as "far too broad," but broadness can refer to two types of challenges. In one sense, a warrant could be too "broad" by being vague, meaning that it is not specific enough to exclude unrelated items and sufficiently direct an officer's attention to the correct area or items sought. In another sense, a warrant can be "broad" when the scope of what is described is beyond what would be necessary or allowed for the purposes of the search, even though the warrant might be clear. This section discusses both senses of the broadness challenge.

Broadness challenges to warrants that are overly vague stem from the "particularity" requirement of the Fourth Amendment, which states that warrants must "particularly [describe] the place to be searched and the persons or things to be seized." U.S. Const. amend. IV. *See also* La. Const. art. 1 § 5. The particularity requirement "ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). There are three main policy considerations underlying the particularity requirement as articulated by the U.S. Supreme Court: (1) the prevention of general searches (*Marron v. United States*, 275 U.S. 192 (1927)); (2) the prevention of mistaken/unauthorized searches and seizures (*id.*); and

(3) the prevention of the "issue of warrants on loose, vague, or doubtful bases of fact" (*Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931)). For these reasons, an "indiscriminate sweep" is "constitutionally intolerable." *Stanford v. Texas*, 379 U.S. 476, 486 (1965).

However, similar to the general principle that the reading of a warrant and affidavit must be commonsensical and rehabilitative, if a warrant is ambiguous such that it might fail the particularity requirement, courts may utilize other information in the affidavit to resolve its ambiguity and support issuance of the warrant. *United States v. Haydel*, 649 F.2d 1152, 1157 (5th Cir. 1981); *accord State v. Smith*, 397 So. 2d 1326, 1328 (La. 1981) ("In some instances this Court has found that information contained in the affidavit may serve to 'particularize' an otherwise general or misleading description in the warrant such that the warrant description is sufficient.").

1. Places

Courts have held that a "basic requirement" of the Fourth Amendment is that "the officers who are commanded to search be able from the 'particular' description of the search warrant to identify the specific place for which there is probable cause to believe that a crime is being committed." *United States v. Hinton*, 219 F.2d 324 (7th Cir. 1955); *accord United States v. Laws*, 808 F.2d 92 (D.C. Cir. 1986). Primarily, the description should prevent a search of the wrong place. *See State v. Cobbs*, 350 So. 2d 168, 171 (La. 1977) ("If the place to be searched is described in sufficient detail to enable the officers to locate it with reasonable probability that the police will not search the wrong premises, the description is sufficient."); *State v. Smith*, 397 So. 2d 1326, 1328 (La. 1981) ("The object of the particularity requirement is to prevent the search of the wrong premises.").

In line with the general level of scrutiny established for warrants, perfection is not required when describing a place—it "is enough if the description is such that the officer with a search warrant can, with reasonable effort, ascertain and identify the place intended." *Steele v. United States*, 267 U.S. 498, 503 (1925). For city premises and dwellings, courts have considered a street address sufficient. *United States v. Dancy*, 947 F.2d 1232 (5th Cir. 1991); *accord United States v. Johnson*, 944 F.2d 396 (8th Cir.1991).[1] Even when a street address is not given, descriptive facts have also been held sufficient if they identify the premises. *See, e.g., Tomblin v. State*, 128 Ga.App. 823, 198 S.E.2d 366 (1973) (numbered apartment in "Colonial Terrace Apartments" sufficient when there was only one apartment complex by that name in the city)).

A search warrant for a multiple-occupancy building (such as an apartment, hotel, or house) will likely be held invalid if it does not describe the particular unit to be searched so as to preclude a search of other units. *United States v. Haydel*, 649 F.2d 1152, 1157 (5th Cir. 1981) (the warrant "need only describe the place to be searched with sufficient particularity to direct the searcher, to confine his examination to the place described…."); *see also United States v. Perez*, 484 F.3d 735 (5th Cir. 2007). If the warrant does not manage to describe a single premises, even though it might seem to, the warrant could be invalidated on the basis of being insufficiently particular.[2] Like other aspects of the law governing search warrants, this circumstance might be subject to a reasonableness consideration in the state's favor. If an officer didn't have reason to believe, and couldn't have discovered by reasonable investigation, that the unit referred to in the warrant was actually multiple units, the warrant and accompanying search

[1] For premises in rural areas without traditional or obvious street markings, courts have found that the owner's name and general directions for reaching the premises are sufficient. *See, e..g., United States v. Rogers*, 150 F.3d 851 (8th Cir. 1998); *United States v. Sherrell*, 979 F.2d 1315 (8th Cir. 1992); *Costner v. State*, 318 Ark. 806, 887 S.W.2d 533 (1994).

[2] For example, if the specified premise turns out to be a subunit, warrants have been held not to cover any other subunits, even if the police were unaware they would actually encounter subunits. *See, e.g., State v. Devine*, 307 Or. 341, 768 P.2d 913 (1989).

could be sustained. *See, e.g.*, *Maryland v. Garrison*, 480 U.S. 79 (1987) (holding execution of warrant, and by extension warrant, was reasonable given officers' beliefs that they had entered the 'third floor dwelling' listed in the warrant, though third floor had multiple units, and officers entered unit previously not suspected).

2. Objects

The key concern for the ultimate accuracy of a warrant that animates the governance of searches of premises also governs the seizure of objects. Like searches of premises, warrants for seizures of objects that do not specify the appropriate objects of seizure to the exclusion of other objects will be held deficient. *Groh v. Ramirez*, 540 U.S. 551 (2004) (where warrant did not describe items to be seized "at all," lack of particularity as to items to be seized). The Fifth Circuit has said that the particularity requirement, as applied to seizures of objects, aims to prevent "general exploratory rummaging and seeks to ensure that the executing officer is able to distinguish between those items which are to be seized and those which are not." *United States v. Hill*, 19 F.3d 984, 987 (5th Cir. 1994); *see also Coolidge v. New Hampshire*, 403 U.S. 443 (1971) (stating problem of general warrants is of "general, exploratory rummaging in a person's belongings"); *State v. Hughes*, 433 So. 2d 88, 921–92 (La. 1983) (the particularity requirement "makes general searches... impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.") (quoting *Andresen v. Maryland*, 427 U.S. 463 (1976)).

The level of description required of objects again appears to be permissive—the particularity requirement "requires the search warrant to describe the property to be seized with reasonable specificity, but not with elaborate detail." *Hill*, 19 F.3d. at 987. At the same time, the Louisiana Supreme Court seems to have argued that the flexibility of the particularity

requirement should be set in relation to the level of complexity of investigation. *Cf. State v. Hughes*, 433 So. 2d 88, 92 (La. 1983) ("[The] United States Supreme Court has recognized that effective investigation of complex white-collar crimes may require the assembly of a 'paper puzzle' from a large number of seemingly innocuous pieces of individual evidence: 'The complexity of an illegal scheme may not be used as a shield to avoid detection when the State has demonstrated probable cause to believe that evidence of this crime is in the suspect's possession.'") (quoting *Andresen v. Maryland,* 427 U.S. 463, 481 n. 10 (1976)).

Even if the description of objects is clear, the warrant may still be defective if its scope is broader than can be justified by the probable cause showing. *See, e.g., VonderAhe v. Howland*, 508 F.2d 364 (9th Cir. 1974) (warrant for *all* books and records of person being investigated for tax fraud too broad, because affidavit indicated that records recording concealed income were a *certain* type of record and located in *certain* place in the office). Similarly, a warrant may be defective if the items it names precisely do not cover another kind of item, even though they might be part of the same category. *Cf. United States v. Hill*, 19 F.3d 984 (5th Cir. 1994) (acknowledging this possibility, but holding that "check stubs" described by the warrant were essentially the same in *function* as the seized "cash disbursement journals").

There are at least three circumstances in which property requires more precise description than usual, as articulated by LaFave et al. in their treatise *Criminal Procedure*:[3] (1) the type of property is in lawful use in substantial quantities;[4] (2) objects of the type are likely to be found at the place searched;[5] and (3) the consequences of seizure of innocent articles by mistake will be

[3] 2 Wayne R. LaFave, Jerold H. Israel, Nancy J. King & Orin S. Kerr, *Criminal Procedure* § 3.4(f) Particular description of things to be seized (4th ed. 2021).
[4] *See In re 1969 Plymouth Roadrunner*, 455 S.W.2d 466 (Mo. 1970) (description of "stereo tapes or players" insufficient).
[5] *See State v. Henderson*, 289 Neb. 271, 854 N.W.2d 616 (2014); *People v. Einhorn*, 75 Misc.2d 183, 346 N.Y.S.2d 986 (1973) (warrant to search drug store for "drugs" and "business records" was "indistinguishable from a general

substantial, e.g. books or films,[6] papers of a newsgathering organization,[7] or cell phones.[8] Computers may also fall into this third category.[9] In contrast, more latitude is given for searches for contraband items like "weapons [or] narcotics." *Stanford v. Texas*, 379 U.S. 476, (1965); *see also Andresen v. Maryland*, 427 U.S. 463, 482, n. 11 (1976) (law enforcement receives less latitude for seizing "innocuous" objects, more latitude for contraband).

3. Vehicles

Our initial motion made one specific broadness challenge: "[f]or example, **[the warrant]** allows for a search of all vehicles on the property and not just the **[specific vehicle the suspects]** were believed to be using." LaFave et al. write that "[w]hen a warrant is issued for search of certain premises and "all automobiles thereon," it is likely to be vulnerable to attack because of insufficiency of description and lack of probable cause extending also to such vehicles."[10]

warrant authorizing a search and seizure of everything in the drug store with the possible exception of aspirin and tooth-paste").

[6] *See Stanford v. Texas*, 379 U.S. 476 (1965).

[7] *See Zurcher v. Stanford Daily*, 436 U.S. 547 (1978).

[8] *See People v. Coke*, 2020 CO 28, 461 P.3d 508 (2020) (given "cell phones' immense storage capacities," search warrant that "permitted the officers to search all texts, videos, pictures, content lists, phone records, and any dates that showed ownership or possession… violates the particularity demanded by the Fourth Amendment"); *Burns v. United States*, 235 A.3d 758, 775 (D.C. Ct. App. 2020) ("given the heightened privacy interests attendant to modern smart phones under *Riley*, it is thus constitutionally intolerable for search warrants simply to list generic categories of data typically found on such devices as items subject to seizure.") (referring to *Riley v. California*, 573 U.S. 373, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014); *Commonwealth v. Wilkerson*, 486 Mass. 159, 156 N.E.3d 754 (2020); *Commonwealth v. Dorelas*, 473 Mass. 496, 43 N.E.3d 306 (2016) ("in the virtual world, it is not enough to simply permit a search to extend anywhere the targeted electronic objects possibly could be found, as data possibly could be found anywhere within an electronic device. Thus, what might have been an appropriate limitation in the physical world becomes a limitation without consequence in the virtual one.").

[9] *See United States v. Galpin*, 720 F.3d 436, 446 (2d Cir. 2013) ("Where, as here, the property to be searched is a computer hard drive, the particularity requirement assumes even greater importance. As numerous courts and commentators have observed, advances in technology and the centrality of computers in the lives of average people have rendered the computer hard drive akin to a residence in terms of the scope and quantity of private information it may contain.").

[10] 2 Wayne R. LaFave, Jerold H. Israel, Nancy J. King & Orin S. Kerr, *Criminal Procedure* § 3.4(e) Particular description of place to be searched (4th ed. 2021). LaFave et al. cite the following: *Green v. State*, 161 Tex.Crim. 131, 275 S.W.2d 110 (1955); *State v. Jamison*, 482 N.W.2d 409 (Iowa 1992); *Garrett v. State*, 270 P.2d 1101 (Okla.Crim.App.1954).

C. The Nexus Requirement

The nexus requirement is a derivation of the requirement that probable cause must exist to seize the item or search the location. *See United States v. Griffin*, 555 F.2d 1323, 1325 (5th Cir. 1977); *accord State v. Cardinale*, 251 La. 827, 834, 206 So. 2d 510, 512 (1968), *writ dismissed*, 394 U.S. 437, 89 S.Ct. 1161, 22 L.Ed.2d 398 (1969) ("Article I, Section 7 of the Louisiana Constitution… provides that no search or seizure shall be made except upon warrant issued upon 'probable cause' (such probable cause usually being a showing of a nexus between the object sought and the commission of a known or suspected crime)."). "Probable cause exists when there are "reasonably trustworthy facts" which, given the totality of the circumstances, are sufficient to lead a prudent person to believe that the items sought constitute fruits, instrumentalities, or evidence of a crime." *Kohler v. Englade*, 470 F.3d 1104 (5th Cir. 2006).

In a more operationalized sense, it must be probable that: (1) the described items are connected with criminal activity (*see Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 307 (1967) ("There must, of course, be a nexus... between the item to be seized and criminal behavior"); and (2) the described items are to be found in the place searched (*see State v. Mena*, 399 So. 2d 149, 152 (La. 1981) ("All that is required is that the affidavit, interpreted in a commonsense and realistic manner, contain information which would warrant a person of reasonable caution to believe that the articles sought are located at the place to be searched") (citing *State v. Baker* 389 So. 2d 1289 (La. 1980) and *State v. Guidry*, 388 So. 2d 797 (La.1980)); *see also State v. Byrd*, 568 So. 2d 554, 559 (La. 1990).

The Louisiana Supreme Court has interpreted this first requirement—that the described items be connected with criminal activity—to mean that the object "probably will lead to an arrest or conviction of a person for a particular crime." *State v. Nuccio*, 454 So. 2d 93, 99 (La.

1984) (interpreting *Hayden*, 387 U.S. 294). *See State v. Wilson*, 467 So. 2d 503, 517 (La. 1985). ("By any standard, the detectives' conclusion that the bloodstained clothing would eventually aid in the conviction of Stephen Stinson's murderer is reasonable. The defendant's bloodstained clothing potentially constituted persuasive circumstantial evidence of his involvement in the homicide.")

One possible argument to make in our case for some of the warrants is that at the time those warrants were issued, the victims were missing, not dead—the argument might be that the warrant didn't establish probable cause that the objects sought would contain evidence of a crime. Many, if not all, of the warrants state that the property "constitutes evidence of the violation of No charge at this time of the Louisiana Revised Statutes." Even though what happened to the victims was later determined to be a crime (murder), it could be argued that warrants for these items were improper because they did not properly relate to the collection of evidence in relation to that crime at the time they were issued; as warrants that were only properly concerned with the location of missing persons, they were effectively warrants for something unrelated. The *Griffith* case is an instance of a warrant failing the nexus requirement in a similar way. The *Griffith* court held that an arrest warrant that provided a detailed description of the purposes justifying an *arrest* failed to establish probable cause for a *search*:

> Here, the lion's share of the affidavit supporting the warrant application is devoted to establishing Griffith's suspected involvement as the getaway driver in a homicide. That information might have established probable cause to arrest Griffith for his participation in the crime. The warrant application, though, was for a search warrant, not an arrest warrant. And to obtain a warrant to search for and seize a suspect's possessions or property, the government must do more than show probable cause to arrest him. The government failed to make the requisite showing in this case.

United States v. Griffith, 867 F.3d 1265, 1271 (D.C. Cir. 2017). Following the logic of the *Griffith* case, we might argue that a warrant issued in order to locate a missing person does not automatically become a warrant for collection of evidence in relation to the murder of those persons.

Furthermore, the United States Supreme Court has stated generally that the constitutionality of police officers' conduct "must [be] judge[d] . . . in light of the information available to them at the time they acted." *Maryland v. Garrison*, 480 U.S. 79, 85 (1987)). *See also Florida v. J.L.*, 529 U.S. 266, 271 (2000) ("The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search"); *United States v. Jacobsen*, 466 U.S. 109, 115 (1984) ("[t]he reasonableness of an official invasion of the citizen's privacy must be appraised on the basis of the facts as they existed at the time that invasion occurred"). The key point here is that the officers in this case did not know the victims were dead.

D. Conclusory Statements

Warrants must provide the reviewing magistrate or judicial officer with a "substantial basis for determining the existence of probable cause," meaning that factual information, not just suspicion and belief, must be included in the warrant or incorporated affidavit; the magistrate's judgment cannot be "mere ratification of the bare conclusions of others." *Illinois v. Gates*, 462 U.S. 213, 239 (1983). The Supreme Court has said there is no "prescribed set of rules" for what represents a conclusory statement. *Id.* at 239. However, affidavits that are "bare bones" (*United States v. Leon*, 468 U.S. 897, 915 (1984)) are automatically deficient under Supreme Court precedent. *See Nathanson v. United States*, 290 U.S. 41 (1933) (warrant deficient where affidavit stated the affiant "has cause to suspect and does believe that" liquor illegally brought into the

United States was located on certain premises; "mere affirmance of belief or suspicion is not enough"); *Aguilar v. Texas,* 378 U.S. 108 (1964) (warrant deficient where affidavit stated "affiants have received reliable information from a credible person and believe" that heroin was stored in a home.); *Riggan v. Virginia,* 384 U.S. 152 (1966) (per curiam, holding the case is controlled by *Aguilar*). Assertions that the person to be arrested or whose house is to be searched is a "known criminal" or is "known" to deal in narcotics are accorded "no weight," and therefore cannot add to the informational value of an otherwise deficient affidavit. *Spinelli v. United States,* 393 U.S. 410, 414 (1969).[11]

One potential challenge to warrants that contain factual information beyond the "bare bones" minimum might be the suggestion that they are circular, and therefore conclusory, because they are entirely based on the beliefs of law enforcement and motivated informants. Unfortunately, the Supreme Court has cautioned that informant's tips should not be subject to "excessively technical dissection." *Massachusetts v. Upton,* 466 U.S. 727, 732 (1984) (citing *Gates,* 462 U.S. at 234–35). An informant's basis of knowledge and his or her veracity are to be taken only as "relevant considerations in the totality of circumstances analysis that traditionally has guided probable cause determinations." *Gates,* 462 U.S. at 233.

The Louisiana Supreme Court has similarly held that the credibility determinations regarding the factual statements of police officers and confidential informants do not weigh heavily on an evaluation of the affidavit unless the defense's allegation is that the statements are false (which would prompt a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978)). *See, e.g., State v. Long*, 03-2592, p. 9-10 (La. 9/9/04), 884 So. 2d 1176, 1182 (warrant sufficient where officer presented only information from confidential informants and officer's own personal

[11] The Sixth Circuit has held that allegations in the warrant that a person consorts with "known" criminals or narcotics dealers are similarly insufficient. *See United States v. Hatcher*, 473 F.2d 321 (6th Cir. 1973).

knowledge of defendant's history with narcotics). Reliance on informants is not deadly in part because of the court's trust in law enforcement to balance their credibility—"an informant's tip can be significantly buttressed if either independent observations by the affiant corroborate sufficient details of the tip (whether suspicious or not) to negate the possibility that the informant fabricated his report, or independent observations by the affiant contribute to a showing of probable cause by revealing not merely normal patterns of activity but activity that reasonably arouses suspicion." *State v. Baker*, 389 So. 2d 1289, 1293 (La. 1980). All that said, some affidavits may be too circular: in one case, an affidavit was held deficient where it was based primarily on hearsay and "double hearsay" relayed by an informant. *State v. Richards*, 357 So. 2d 1128, 1131–32 (La. 1978).

E. Jurisdiction

1. Identity-based jurisdiction challenges

The Supreme Court held in *Shadwick v. City of Tampa* that warrant-granting judicial officers or magistrates must meet two tests: they must be (1) "neutral and detached"; and (2) "capable of determining whether probable cause exists for the requested arrest or search." *Shadwick v. Tampa*, 407 U.S. 345, 350 (1972); *accord United States v. Harris*, 566 F.3d 422, 433 (5th Cir. 2009), *State v. Umezulike*, 03-1404, p. 9 (La. 2/25/04), 866 So. 2d 794, 800. Regarding the capability test, a magistrate or judicial officer does not have to be a lawyer so long as they satisfy these tests, though being a lawyer, and certainly a judge, can satisfy this prong (*see Shadwick*, authorizing a municipal court clerk's issuance of a warrant).

Regarding the neutrality and detachment test, the U.S. Supreme Court has found violations where the magistrate: (1) had a pecuniary interest in issuing the warrant (*see Connally v. Georgia*, 429 U.S. 245, 251 (1977)), or (2) actively participated in the police investigation

underlying the warrant *(see Lo–Ji Sales, Inc. v. New York*, 442 U.S. 319, 327–28 (1979)). Regarding this second point, the Supreme Court stated in *Shadwick* that "[w]hatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement." 407 U.S. at 352. A magistrate cannot "serve merely as a rubber stamp for the police." *United States v. Leon*, 468 U.S. 897, 914 (1984) (quoting *Aguilar v. State of Texas*, 378 U.S. 108).[12]

2. Territory and authority-based jurisdiction challenges

In federal court, U.S. magistrate judges may issue a warrant authorizing a search outside of their assigned district. Fed. R. Crim. P. 41(b)(2)–(6). However, state judges are only able to do so where they are authorized by the laws of the state.[13] The Louisiana Code of Criminal Procedure authorizes a judge to issue a warrant for "any thing within *the territorial jurisdiction of the court*," provided it falls into one of three enumerated categories, including objects that "[m]ay be evidence tending to prove the commission of an offense." La. C.Cr.P., art. 161 (emphasis added); *see also State v. Green*, 02-1022 (La. 12/4/02), 831 So. 2d 962.

Of the nine warrants we challenge on the basis of jurisdiction, five concern phone records, three concern Facebook accounts, and one concerns a Snapchat account. One argument to make is that each of the respective companies (Verizon, T-Mobile, Facebook, and Snap, Inc.) are "outside" the territorial jurisdiction of the Louisiana court issuing the warrants because the premises listed for those companies on the warrants themselves are outside Louisiana (Verizon

[12] The neutrality and detachment test seems to be a low bar to clear. Other courts have found that a magistrate's recusal in order to avoid the appearance of impropriety is not enough on its own to establish bias (*Davis v. State*, 367 Ark. 341, 240 S.W.3d 110 (2006)), and neither is the basic fact that the magistrate was previously in a position adverse to the defendant (*United States v. Bowling*, 619 F.3d 1175 (10th Cir. 2010)). The Fifth Circuit has held that a judge who represented the defendant previously was not necessarily biased. *See United States v. Harris*, 566 F.3d 422, 433 (5th Cir. 2009).

[13] *See State v. Frazier*, 558 S.W.3d 145 (Tenn. 2018) (holding a circuit court judge in Tennessee lacked jurisdiction to issue search warrants for property outside judge's defined judicial district; could only issue if expanded geographical jurisdiction obtained by interchange, designation, appointment, or other lawful means).

and T-Mobile were listed as located in New Jersey, Facebook and Snapchat as located in California).

There may also be an argument about statutory authority for the seizures of the records. The phone record warrants list their source of authority as Revised Statutes 15:1314–1316 of the Louisiana Code of Criminal Procedure. However, 1314–16 seem to only endow courts with the authority to grant law enforcement the use of a "pen register" or "trap and trace device." It's not clear why this would entitle courts to authorize the compilation of past records. Additionally, the phone record and social media warrants list their authority as the Stored Communications Act (SCA), 18 U.S.C. § 2703. The State also argues in their opposition to **[one of our motions]** that the SCA authorizes these warrants. This does not seem exactly right. The SCA states that a governmental entity "may require a provider of remote computing service to disclose the contents of any wire or electronic communication… only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures[])]…." 18 U.S.C. § 2703.[14] So, while Louisiana procedures will certainly control, Louisiana courts are not necessarily empowered to grant a warrant for these records without further statutory authority from Louisiana.

[The remainder of the memo, which is cut for length, analyzes individual search warrants from the case.]

[14] Section (b) also makes use of this "state procedures" language: "… if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures…." 18 U.S.C. § 2703(b)(1), (b)(1)(A).

Applicant Details

First Name	**Callen**
Last Name	**DiGiovanni**
Citizenship Status	**U. S. Citizen**
Email Address	**ctd9834@nyu.edu**
Address	**Address** Street **272 Grand St., Apt. 13** City **Brooklyn** State/Territory **New York** Zip **11211** Country **United States**
Contact Phone Number	**8177093566**

Applicant Education

BA/BS From	**Vanderbilt University**
Date of BA/BS	**May 2021**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 15, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Annual Survey of American Law**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Orison S. Marden Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Sharkey, Catherine
catherine.sharkey@nyu.edu
212-998-6729

Hemel, Daniel
daniel.hemel@nyu.edu
212.998.6354

Gillette, Clayton
clayton.gillette@nyu.edu
212-998-6749

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Callen T. DiGiovanni
272 Grand Street, Apt. 13
Brooklyn, NY 11211

June 12, 2023

The Honorable Juan R. Sanchez
United States District Court
Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am a rising third-year student at New York University School of Law, and I am writing to express my sincere interest in clerking in your chambers for the 2024 term or any subsequent term. I have enclosed my resume, law school transcript, undergraduate transcript, and writing sample. Additionally, I will be taking Property, Federal Courts, Criminal Procedure, and Evidence during my 3L year.

My first recommendation is from Professor Daniel Hemel, who may be reached at (212) 998-6354, or via email at daniel.hemel@nyu.edu. Professor Hemel was my 1L Torts professor, and I also served as one of his teaching assistants for the same course during my 2L year.

My second recommendation is from Professor Clayton Gillette, who may be reached at (212) 998-6749, or via email at clayton.gillette@nyu.edu. Professor Gillette was my 1L Contracts professor. Additionally, as Professor Gillette's research assistant, I engaged with case law concerning perpetual contracts and the circumstances under which courts will enforce them, ultimately compiling those cases into a summary on the particular area of law.

Finally, my third recommendation is from Professor Catherine Sharkey, who may be reached at (212) 998-6279, or via email at catherine.sharkey@nyu.edu. Professor Sharkey was my Business Torts professor, and I recently started as a research assistant for her, a role in which I will be studying the relationship between regulation, tort, and artificial intelligence.

I can be reached at (817) 709-3566, or via email at ctd9834@nyu.edu. Thank you for your time and consideration.

Respectfully,

Callen DiGiovanni

Callen T. DiGiovanni

CALLEN DIGIOVANNI

ctd9834@nyu.edu | (817) 709-3566 | 272 Grand St., Apt. 13, Brooklyn, NY 11211

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
Candidate for J.D., May 2024
Unofficial GPA: 3.65
Activities: Teaching Assistant: Daniel Hemel, Torts, Fall 2022
Research Assistant: Robert Jackson Jr., Summer 2022–Present; Catherine Sharkey, Summer 2023–Fall 2023; Clayton Gillette, Spring 2023
Mediation Clinic, Student Mediator, Fall 2022
Suspension Representation Project, Student Advocate
Honors: *NYU Annual Survey of American Law*, Editor-in-Chief
Robert McKay Scholar (a student in the top 25% based on their cumulative averages after four semesters)
Orison S. Marden Moot Court Competition, Semi-Finalist
Dean's Scholarship Recipient (awarded half-tuition based on merit alone)

VANDERBILT UNIVERSITY, Nashville, TN
B.S. in Human and Organizational Development & Medicine, Health, and Society, *magna cum laude*, May 2021
Official GPA: 3.93
Honors Thesis: *Perceived and Actual Social Norms Related to Mental Health Treatment Seeking and Mental Health Stigma Among Undergraduates at a Private, Southeastern University*
Activities: Interfraternity Council, President & Greek Inclusivity Alliance Member
Relay for Life, Vice President of Administration
Research Assistant: Jessica Perkins, Spring 2021
Honors: Honors in the Human & Organizational Development Major

EXPERIENCE

SULLIVAN & CROMWELL LLP, New York, NY
Summer Associate, Summer 2023

VINSON & ELKINS LLP, New York, NY
Summer Associate, Summer 2022 (return offer extended)
Conducted research and drafted a ten-page memo on amendment and waiver within contract disputes for ongoing litigation. Created an outline of the SEC's universal proxy statement rule to provide senior attorneys with relevant information. Researched proxy statements to aid a corporation looking to redomicile in the U.S. Gathered materials on the SEC's priorities for 2022 examinations. Compiled and analyzed 30 documents to assist in creating an outline for a witness interview tied to an internal investigation.

OFFICE OF THE DISTRICT ATTORNEY GENERAL: NASHVILLE, DAVIDSON COUNTY, Nashville, TN (Remote)
Victim Witness Intern, Aug 2020–Nov 2020
Compiled research on the psychological and physiological effects of trauma. Developed six training documents based on past criminal cases. Formalized a list of 175 legal terms common in General Sessions Court to educate clients on legal processes and proceedings.

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, Nashville, TN
Advocate Intern, Summer 2019
Filed Orders of Protections for indigent clients; all six were granted. Researched 350 Orders of Protections to aid in successfully petitioning Davidson County judges to notify petitioners of combined criminal and civil cases before General Sessions Court.

VANDERBILT UNIVERSITY: OFFICE OF STUDENT FINANCIAL AID AND SCHOLARSHIPS, Nashville, TN
Administrative Assistant, June 2019–May 2021
Served as the initial contact point for visitors, students and parents seeking information about financial aid at Vanderbilt. Cataloged documents associated with an individual student's financial aid package. Removed and organized past student files.

AETNA, Austin, TX (Remote)
General Management Intern, Summer 2020
Created a generalized drive-through flu-shot clinic model to adapt to the COVID-19 pandemic. Contacted and organized 20 healthcare vendors by type of services for a virtual health fair created due to COVID-19. Attended eight executive-led presentations.

ADDITIONAL INFORMATION

Enjoy tennis (former player & instructor), pickleball and wakesurfing. Avid fan of the Dallas Cowboys (born and raised in TX).

Name: **Callen T DiGiovanni**
Print Date: **06/08/2023**
Student ID: **N10406658**
Institution ID: **002785**
Page: **1 of 1**

New York University
Beginning of School of Law Record

Fall 2021

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Faraz Sanei			
Criminal Law	LAW-LW 11147	4.0	B+
Instructor: Anna N Roberts			
Torts	LAW-LW 11275	4.0	A
Instructor: Daniel Jacob Hemel			
Procedure	LAW-LW 11650	5.0	A
Instructor: Troy A McKenzie			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Ryan J Bubb, Emiliano Octavio Marambio Catan			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
Juris Doctor
Major: Law

Corporations	LAW-LW 10223	4.0	B
Instructor: Richard Rexford Wayne Brooks			
Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Faraz Sanei			
Legislation and the Regulatory State	LAW-LW 10925	4.0	B
Instructor: Samuel J Rascoff			
Contracts	LAW-LW 11672	4.0	A
Instructor: Clayton P Gillette			
Financial Concepts for Lawyers	LAW-LW 12722	0.0	CR

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2022

School of Law
Juris Doctor
Major: Law

Mediation Clinic Seminar	LAW-LW 10657	3.0	A
Instructor: Raymond E Kramer, Daniel Michael Weitz			
Mediation Clinic	LAW-LW 10833	2.0	A
Instructor: Raymond E Kramer, Daniel Michael Weitz			
Orison S. Marden Moot Court Competition	LAW-LW 11554	1.0	CR
Teaching Assistant	LAW-LW 11608	2.0	CR
Instructor: Daniel Jacob Hemel			
Constitutional Law	LAW-LW 11702	4.0	A-
Instructor: Kenji Yoshino			
Research Assistant	LAW-LW 12589	1.0	CR
Summer 2022 Research Assistant			
Instructor: Robert Jackson			
Research Assistant	LAW-LW 12589	1.0	CR
Instructor: Robert Jackson			

	AHRS	EHRS
Current	14.0	14.0
Cumulative	44.0	44.0

Spring 2023

School of Law
Juris Doctor
Major: Law

Complex Litigation	LAW-LW 10058	4.0	B+
Instructor: Samuel Issacharoff, Arthur R Miller			
Professional Responsibility and the Regulation of Lawyers	LAW-LW 11479	2.0	A-
Instructor: Tyler Maulsby			
Orison S. Marden Moot Court Competition	LAW-LW 11554	1.0	CR
Business Torts: Defamation, Privacy, Products and Economic Harms	LAW-LW 11918	4.0	A-
Instructor: Catherine M Sharkey			
Science and the Courts	LAW-LW 12668	2.0	A+
Instructor: Jed S Rakoff			
Science and the Courts Seminar: Writing Credit	LAW-LW 12801	1.0	IP
Instructor: Jed S Rakoff			

	AHRS	EHRS
Current	14.0	13.0
Cumulative	58.0	57.0

McKay Scholar-top 25% of students in the class after four semesters
Staff Editor - Annual Survey of American Law 2022-2023

End of School of Law Record

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD CLASS OF 2023 AND LATER & LLM STUDENTS

I certify that this is a true and accurate representation of my NYU School of Law transcript.

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	**All other JD and LLM (Non-Mandatory)**
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	***Maximum for A tier = 31%***
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	***Maximum grades above B = 57%***
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

Pomeroy Scholar:	Top ten students in the class after two semesters
Butler Scholar:	Top ten students in the class after four semesters
Florence Allen Scholar:	Top 10% of the class after four semesters
Robert McKay Scholar:	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021